No. 11396

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

JAMES H. ADAMSON and MARION C. ADAMSON,

Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

JAMES M. CARTER
Acting United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistants U. S. Attorney

EUGENE HARPOLE
Special Attorney, Bureau of Internal Revenue

600 U. S. Post Office and Court House Building
Los Angeles 12, Calif.

For Appellees:

ZAGON, AARON AND SANDLER
NATHAN SCHWARTZ

6253 Hollywood Boulevard
Los Angeles 28, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

In the District Court of the United States in and for the Southern District of California
Central Division

No. 4649 B. H.

JAMES H. ADAMSON and MARION C. ADAMSON,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

Plaintiffs complain and allege:

I.

This action is brought to recover an overpayment of individual income taxes erroneously and illegally assessed and collected under the Internal Revenue Laws of the United States. It is instituted under the Revenue Laws of the United States.

II.

At all times herein involved, the plaintiffs herein have been, and still are, husband and wife; and the plaintiffs reside at Laguna Beach, Orange County, California, within the Central Division, Southern District, of the above entitled court.

III.

On or about March 14, 1941, plaintiffs filed with the Collector of Internal Revenue for the Third District of New York their joint federal income tax return for the calendar year 1940; and, upon said return, their joint income tax for the year [2] 1940 was shown to be the sum

of Two Thousand Four Hundred Eighty Nine and 15/100 Dollars ($2,489.15). Concurrently with said return, plaintiffs paid to the said Collector the sum of Six Hundred Twenty-One and 29/100 Dollars ($621.29) as the first installment of said joint income taxes. Thereafter, and on or about March 10, 1943, and subsequent to the disallowance of plaintiffs' claim for refund as hereinafter set forth, plaintiffs paid to the Collector of Internal Revenue for the Sixth District of California, upon said taxes, the further sum of One Thousand Dollars ($1,000.00); and thereafter, and on or about April 8, 1943, plaintiffs paid to the Collector of Internal Revenue for the Sixth District of California, as a final payment upon said taxes, the sum of Eight Hundred Sixty Seven and 86/100 Dollars ($867.86), together with interest in the amount of One Hundred Sixty-Eight Dollars and Eleven Cents ($168.11), and One Dollar ($1.00) for release of a lien, or a total payment of One Thousand Thirty-Six Dollars and Ninety-Seven Cents ($1,036.97).

The amount of income tax reported by plaintiffs on the said return, and paid by them as aforesaid, was excessive and incorrectly computed and erroneously and illegally assessed and collected, in that: There was erroneously included in said return, as "Income—Rents and Royalties," an amount of Thirty Two Thousand Five Hundred Dollars ($32,500.00). James H. Adamson sold to his brother all of his right, title and interest in and to a certain partnership between them, together with his interest in certain inventions and trademark. The sale was made on or about October 20, 1939. The aforesaid partnership was entered into in November, 1925. The assets sold were held for more than two (2) years before sale. The amount

reported in 1940 as "income from royalties" was in fact a long term gain on the sale of capital assets, and only fifty (50%) per cent thereof should have been taken into account.

When correctly computed, the joint income tax of [3] the plaintiffs for the said year 1940 was Eighty and 74/100 Dollars ($80.74); and there was therefore, illegally assessed, and plaintiffs therefore overpaid, a tax for said year in the amount of Two Thousand, Four Hundred Eight and 41/100 Dollars ($2,408.41), together with the interest and lien charge aforementioned.

V.

On or about August 24, 1942, plaintiffs duly filed, with the Collector of Internal Revenue for the Third District of New York their amended joint federal income tax return for the calendar year 1940, therein correctly showing their income tax liability for said year to be Eighty and 74/100 Dollars ($80.74); and, concurrently with said amended return, plaintiffs duly filed their claim for refund of Five Hundred Forty and 55/100 Dollars ($540.55), being the amount paid by plaintiffs to said Collector of Internal Revenue for the Third District of New York, upon the first installment of their tax for said year less the total amount of their correctly computed tax for said year, to-wit, Eighty and 74/100 Dollars ($80.74). The grounds set forth in said claim as a basis for said refund were the same as those heretofore set forth in Paragraph IV of this Complaint, except that the capital asset therein and hereinabove referred to was in said claim incorrectly described as a "patent"; a correction of this error in description was duly made and filed

with the Collector of Internal Revenue for the Third District of New York on or about March 25, 1943.

VI.

On or about October 5, 1943, the aforesaid claim for refund was rejected and disallowed in full by the Commissioner of Internal Revenue, and notice of said action was, on or about October 5, 1943, mailed to plaintiffs by the Commissioner by registered mail.

VII.

On or about December 27, 1943, and after the payment of all of the plaintiffs' joint federal income tax for 1940 as shown [4] on their original return, all as hereinabove set forth in Paragraph III, plaintiffs duly filed with the Collector of Internal Revenue for the Sixth District of California their claim for a refund of said taxes in the amount of Two Thousand Four Hundred Eight and 41/100 Dollars ($2408.41), being the entire amount of income taxes for 1940 which had theretofore been paid by plaintiffs, to-wit, the sum of Two Thousand Four Hundred Eighty Nine and 15/100 Dollars ($2,489.15), less the correctly computed joint tax for said year, to-wit, the sum of Eighty and 74/100 Dollars ($80.74). The grounds set forth in said claim filed on or about December 27, 1943, as a basis for such refund were the same as hereinbefore set forth in Paragraph IV of this Complaint.

VIII.

More than six (6) months has elapsed since the filing of the claim referred to in Paragraph VII of this Complaint, and the Commissioner of Internal Revenue has not allowed or approved the said claim in whole or in part, and the defendant has failed and refused, and still fails

and refuses, to refund to the plaintiffs, or either of them, the sums demanded in the aforesaid claims, or in either of them, or any portion thereof; plaintiffs are entitled to recover of the defendant the aforesaid sum of Two Thousand Four Hundred Eight Dollars and Forty-One Cents ($2,408.41), together with the interest and lien charge referred to in Paragraph III of this Complaint, together with interest thereon at the rate prescribed by law.

IX.

Both the claim and corrected claim referred to in Paragraph V of this Complaint, and the claim referred to in Paragraph VII of this Complaint, were duly filed within three (3) years from and after the date of filing of the return referred to in Paragraph III of this Complaint. The claim referred to in Paragraph V of this Complaint was duly filed within two years from and after the [5] date of payment by the plaintiffs of the amount of tax therein involved, and the claim referred to in Paragraph VII of this Complaint was duly filed within two (2) years from and after the date of payment of the amount of tax therein involved.

Wherefore, plaintiffs pray for judgment against the defendant in the sum of Two Thousand Five Hundred Seventy-Seven Dollars and Fifty-Two Cents ($2,577.52), together with interest on said sum at the rate prescribed by law, and for such other and further relief as the court may deem just and proper in the premises.

ZAGON, AARON AND SANDLER and
NATHAN SCHWARTZ
By Nathan Schwartz

[Verified.]

[Endorsed]: Filed Aug. 2, 1945. [7]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant in the above entitled action and in answer to plaintiffs' complaint, denies generally each and every allegation therein contained.

CHARLES H. CARR
United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistant U. S. Attorneys

EUGENE HARPOLE, Special Attorney
Bureau of Internal Revenue

By George M. Bryant
Attorneys for Defendant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 5, 1945. [8]

[Title of District Court and Cause.]

AMENDED ANSWER

Comes now the defendant, leave of Court first having been had and obtained, and files this its Amended Answer to plaintiffs' complaint:

I.

Admits each and every allegation contained in Paragraph I thereof, except that it is denied that there has been any overpayment or erroneous and/or illegal assessment and/or collection of individual income taxes.

II.

Admits the allegations contained in Paragraph II thereof.

III.

Admits the allegations contained in Paragraph III thereof through line 16 on page 2 thereof.

Denies each and every allegation contained in Paragraph III thereof, commencing with line 17 on page 2 thereof.

V.

Admits the allegations contained in Paragraph V thereof, except that the [9] defendant alleges that the amended return and claim for refund described therein were filed by plaintiffs on June 13, 1941, instead of on August 24, 1942. Defendant further denies that the amended return correctly showed the income tax liability of plaintiffs for the year 1940 to be $80.74, and it is further denied that the amount claimed in the said claim for refund was the amount paid by plaintiffs as the first installment of their

1940 income tax less the amount of their correctly computed tax for said year.

VI.

Admits the allegations contained in Paragraph VI thereof.

VII.

Admits the allegations contained in Paragraph VII thereof, except that defendant denies that the amount claimed in the said claim for refund was the total amount of income taxes paid by plaintiffs for 1940 less the correctly computed joint tax of plaintiffs for said year.

VIII.

Denies each and every allegation contained in Paragraph VIII thereof, except that defendant admits that no refund has been made of the amounts demanded in the said claim for refund. Defendant alleges that the claim for refund of $2,408.41 filed by plaintiffs on December 27, 1942, was rejected by the Commissioner of Internal Revenue by registered letter dated July 26, 1945, addressed to the plaintiffs.

IX.

Admits the allegations contained in Paragraph IX thereof.

Wherefore, having fully answered, the defendant prays that it be hence dismissed with its costs in this behalf expended.

CHARLES H. CARR
United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistant U. S. Attorneys

EUGENE HARPOLE, Special Attorney
Bureau of Internal Revenue

By George M. Bryant
Attorneys for Defendant [10]

STIPULATION

It is hereby stipulated and agreed by and between the parties to the above entitled action, through their respective counsel undersigned, that the foregoing amended answer may be filed.

Dated this 17th day of December, 1945.

ZAGON, AARON AND SANDLER, and
NATHAN SCHWARTZ

By Ray Sandler
Attorneys for Plaintiffs

CHARLES H. CARR
United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistant U. S. Attorneys

EUGENE HARPOLE, Special Attorney
Bureau of Internal Revenue

By George M. Bryant
Attorneys for Defendant

It is so ordered this 21st day of December, 1945.

BEN HARRISON, Judge

[Endorsed]: Filed Dec. 21, 1945. [11]

[Title of District Court and Cause.]

STIPULATION OF FACTS

It is stipulated and agreed by and between each of the parties in the above entitled action, through their respective counsel, for the purposes of this action alone that the following facts are true:

I.

This action is brought to recover the sum of $2,577.52, together with interest as prescribed by law, upon the theory that certain individual income taxes were erroneously and illegally assessed against and collected from the plaintiffs under the Internal Revenue laws of the United States.

II.

The plaintiffs herein at all times mentioned in the complaint were and still are husband and wife residing at Laguna Beach in Orange County, State of California, within the Central Division, Southern District of the above entitled Court.

III.

That on or about March 14, 1941, the plaintiffs filed with the Collector [12] of Internal Revenue for the Third District of New York their joint federal income tax return for the calendar year 1940; that said return was prepared upon a calendar year basis and showed a total gross income of $42,525; that deductions were claimed against said income in the sum of $21,569.55; that the tax indicated to be due thereon was shown to be $2,489.15; that therewith plaintiffs paid to the Collector the sum of

$621.29 as the first installment of said joint income taxes; that on or about March 10, 1943, and subsequent to a disallowance of plaintiffs' claim for refund described hereinafter plaintiffs paid to the Collector of Internal Revenue for the Sixth Collection District of California upon said taxes the sum of $1,000, and to the same Collector on or about April 8, 1943, plaintiffs paid as a final payment upon said taxes the sum of $867.86, together with interest in the amount of $168.11, and $1 for release of a lien filed by the Collector of Internal Revenue for the Sixth Collection District of California against the property of the plaintiffs; and that the total amount paid by plaintiffs by reason of their individual income and defense tax for the year 1940, including interest and lien charges, was the sum of $2,658.26.

IV.

Plaintiffs claim that the correct amount of the tax due and owing from them was the sum of $80.74. The United States determined that the amount of tax due is $2,489.15. The difference between the computations of the plaintiffs and the computations of the Government result from the inclusion in said return of the sum of $32,500 received by the plaintiffs from one Percy Adamson, the brother of James H. Adamson, one of the plaintiffs in this case under an agreement dated October 20, 1939, a copy of which is attached hereto marked Exhibit "C" and is incorporated herein as if set forth in full.

V.

That on or about June 13, 1941, the plaintiffs filed with the Collector of Internal Revenue for the Third District of New York claim for refund which was numbered

2,639,120 in the amount of $540.55; that on October 5, 1943, the Commissioner of Internal Revenue rejected said claim for refund; that on or about December 27, 1943, plaintiffs filed a claim for refund in the sum of $2,408.41, which was numbered 2,849,066 which claim was filed with the Collector of Internal [13] Revenue for the Sixth Collection District of California; that on July 26, 1945, the Commissioner of Internal Revenue rejected this claim for refund; and that on August 2, 1945, this action was filed.

VI.

The grounds stated in the claim for refund filed June 13, 1941, are as follows:

> Original income tax return was filed showing net income of $20,955.45. Due to error, profit on sale of patent was included as income from royalties instead of a long term gain. If correctly reported the total tax to be paid would amount to $80.74 as per amended return filed. Since the sum of $621.29 has been paid for the first quarterly payment on the amount erroneously reported, there has been an overpayment of $540.55.

VII.

The grounds stated in the claim for refund filed December 27, 1943, are as follows:

> Taxpayers filed a joint return for 1940 and erroneously reported a long term gain on the sale of capital assets as income from royalties. James Adamson sold to his brother all of his right, title and interest in and to a certain partnership between them, together with his interest in certain inventions and

trade mark. The sale was made on or about October 20, 1939. The aforesaid partnership was entered into in November, 1925. The assets sold were held for more than two years before sale. The amount reported in 1940 as income from royalties was in fact long term gain on the sale of capital assets and only 50% thereof should have been taken into account.

This claim was prepared by Forest W. Monroe & Associates from information furnished by the taxpayers. [14]

VIII.

That on or about the first day of November, 1925, James H. Adamson and Percy Adamson entered into an agreement to become partners at will under the firm name and style of Adamson Bros. Company, for the purpose of engaging in the business of developing and dealing in yarns and textiles, including the development of ideas in the field of special yarns, pursuant to an oral understanding that James H. Adamson would furnish sufficient capital to get started, and that both James H. Adamson and Percy Adamson would cooperate in the management of the business, with James H. Adamson exercising a general supervision and control of the business, and Percy Adamson devoting all of his time and attention to the conduct thereof, the profits to be shared equally between them.

IX.

That said co-partnership entered upon the transaction of business in November 1925, and that said copartnership was terminated on or about the month of December, 1932.

X.

That, in the year 1930, Percy Adamson conceived the idea of an elastic yarn and, on July 30, 1930, filed in the United States Patent Office an application for a patent thereon. That, between July 30, 1930, and June, 1931, experimental and development work in connection with said idea was conducted and, on June 11, 1931, a new application for a patent was filed by said Percy Adamson in the United States Patent Office, which application was a continuation, in part, of the application filed July 30, 1930. That United States Letters Patent No. 1,822,847, covering an elastic yarn, was issued on such application on September 9, 1931.

XI.

That said co-partnership paid the expense of prosecuting said patent applications and, in addition thereto, incurred liability for development and experimental expenses in connection therewith. That at all times prior to November 1, 1931, said invention was dealt with by James H. Adamson and Percy Adamson and was the property of said co-partnership. [15]

XII.

That the elastic yarn described in said patent and patent applications was and is known as "Lastex." That, on or about April 9, 1931, the said co-partnership filed in the United States Patent Office an application for the registration of a trademark for use in connection with the sale of such yarn, which trademark consisted of the word "Lastex" in a distinctive style of printing. That said trademark was duly registered on May 8, 1931, as the property of said co-partnership.

XIII.

That on or about April 10, 1931, Percy Adamson entered into two agreements, in writing, with the U. S. Rubber Company whereby in consideration of the license to use said invention and other consideration, including the agreement of said Percy Adamson to procure the assignment to the U. S. Rubber Company of said trademark, the U. S. Rubber Company agreed to pay to said Percy Adamson certain royalties and commissions. That said contracts were made simultaneously and as a single transaction.

XIV.

That on or about January 2, 1932, Percy Adamson and the said U. S. Rubber Company entered into two contracts, in writing, which were made in substitution and superseded the contracts made April 10, 1931.

XV.

That on or about July 7, 1931, in pursuance of said agreement made by Percy Adamson with the U. S. Rubber Company on April 10, 1931, the said co-partnership assigned to the U. S. Rubber Company the aforementioned trademark.

XVI.

That on or about November 1, 1931, Percy Adamson assumed the exclusive management of the partnership affairs without the consent of James H. Adamson. That on or about March 24, 1934, Percy Adamson repudiated the existence of the partnership or any partnership obligation.

XVII.

That after November 1, 1931, neither the partnership of Adamson Bros. Company nor James H. Adamson engaged in the business of developing and dealing [16] in yarns and textiles, or in the development of ideas in the field of special yarns.

XVIII.

That on or about May 14, 1934, James H. Adamson commenced an action in the Supreme Court of New York County against Percy Adamson for the dissolution of the partnership and for an accounting of the affairs and property of said partnership.

XIX.

That thereafter by order made and entered in said action, Harold R. Medina was duly appointed Referee to hear and determine the same. That on December 31, 1937, the said Harold R. Medina rendered his opinion in the said action and on January 8, 1938, he made his report in the said action wherein he set forth his findings of fact and conclusions of law and made his decision therein. That a copy of said decision is attached hereto, marked Exhibit "A," and by this reference made a part hereof.

XX.

That thereafter and on July 8, 1939, a judgment was filed and entered in the above entitled action in accordance with the decision hereinabove referred to. That a copy of said judgment is hereto attached, marked Exhibit "B," and by this reference made a part hereof.

XXI.

That by said decision and judgment it was adjudicated, among other things, that James H. Adamson and Percy Adamson were each entitled to an undivided one-half share, as tenants in common, to the contracts with the U. S. Rubber Company, hereinabove referred to, dated January 2, 1932. It was further directed that Percy Adamson be directed to execute and deliver to James H. Adamson an assignment of the undivided share of the said contracts, such assignment to be made by way of confirmation and further assurance of the title to such undivided share.

XXII.

That the said judgment provided, among other things, that Percy Adamson pay to James H. Adamson the sum of $271,044.92, together with interest and costs. [17] That the obligation to pay said sum was discharged by agreements dated February 23, 1938, and September 11, 1939.

XXIII.

That on or about the 20th day of October, 1939, James H. Adamson entered into an agreement with Percy Adamson and the U. S. Rubber Company wherein and whereby the said James H. Adamson did sell, assign and transfer to Percy Adamson all of his right, title and interest in and to any and all assets which formerly belonged to the partnership hereinabove referred to, between James H. Adamson and Percy Adamson, under the firm name and

style of Adamson Bros. Company, consisting primarily of the following:

(a) The reversionary or other right of the certain trademark "Lastex" and the registration thereof.

(b) The certain invention for which the United States Letters Patent No. 1,822,847 was issued under date of September 8, 1931, together with all Letters Patent of foreign countries issued thereon, and all applications therefor.

(c) The two certain contracts, both dated January 2, 1932, between Percy Adamson and the U. S. Rubber Company, hereinabove described.

That, in consideration of the said sale, Percy Adamson agreed to pay to James H. Adamson the sum of $215,000, without interest, as follows:

> $5,000 upon the execution of the agreement and $210,000 in equal installments of $2,500 each, beginning on December 1, 1939, and, thereafter, on the 1st day of each second month until the full balance of $210,000 shall have been paid.

That a copy of said agreement is hereto attached, marked Exhibit "C" and by this reference made a part hereof.

XXIV.

Plaintiffs contend that the sums received under the said contract dated October 20, 1939, for the taxable years

involved constitute a capital gain, whereas the Commissioner of Internal Revenue determined that the amount received [18] under said contract constitutes ordinary income.

Dated at Los Angeles, California, this 8 day of January, 1946.

ZAGON, AARON AND SANDLER and
NATHAN SCHWARTZ

By Ray Sandler

Attorneys for Plaintiffs

CHARLES H. CARR
United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistant U. S. Attorneys

EUGENE HARPOLE, Special Attorney
Bureau of Internal Revenue

By George M. Bryant

Attorneys for Defendant [19]

[EXHIBIT "A"]

SUPREME COURT : NEW YORK COUNTY

———————————————X

James H. Adamson,

Plaintiff,

– against –

Percy Adamson,

Defendant,

and

Superior Seating Company, Inc.,

Defendant, DECISION

———————————————X #19023/1934

Thomas Adamson,

Plaintiff,

– against –

Superior Seating Company, Inc.,
Lillian Mandel and Jacob Klausner,

Defendants.

and

James H. Adamson,

Defendant.

———————————————X

The issues in the above entitled action with respect to which a new trial was ordered by an order of the Appellate Division, First Department, entered February 9, 1937, upon which judgment was entered in the Office of the Clerk of this Court on February 11, 1937, having been duly referred to the undersigned as Referee to hear and determine, by order made at Special Term, Part III of this Court, dated the 19th day of March 1937, upon the consent of all parties to the action; and the said order of

the Appellate Division and the judgment entered thereon having thereafter been resettled, and the issues with respect to which a new trial was ordered by said resettled order of the Appellate Division having thereafter been referred to the undersigned as Referee to hear and determine, by order made at Special Term, Part III of this Court, dated the 4th day of March 1937, likewise upon the consent of all the parties to the action; and the account of the defendant Percy Adamson having been filed with the Referee on or about the 15th day of April 1937; and objections of the plaintiff James H. Adamson to said account having been filed with the Referee on or about the 26th day of April 1937; and before proceeding to hear testimony upon said reference the Referee having duly taken the statutory oath; and the allegations and proofs of the parties having been taken at hearings held on March 2, 1937, March 10, 1937, March 31, 1937, April 7, 1937, April 12, 1937, April 15, 1937, April 20, 1937, April 21, 1937, April 28, 1937, May 4, 1937, May 6, 1937, May 11, 1937, May 13, 1937, May 25, 1937, May 26, 1937, June 1, 1937, June 3, 1937, June 8, 1937, June 9, 1937, June 10, 1937, June 16, 1937, June 17, 1937, June 24, 1937, September 24, 1937, October 4, 1937, October 8, 1937, October 19, 1937, October 20, 1937, October 21, 1937 and October 22, 1937.

And the Appellate Division by said resettled order filed March 15, 1937, having duly made findings of fact and conclusions of law including the following:

"Findings of Fact

"First: That on or about the 1st day of November, 1925, James H. Adamson and Percy Adamson entered into an agreement to become partners at will

under the firm name and style of Adamson Bros. Company for the purpose of engaging in the business of developing and dealing in yarns and textiles, including the develop- [21] ment of ideas in the field of special yarns, pursuant to an oral understanding that James H. Adamson would furnish sufficient capital to get the business properly started, and that both James H. Adamson and Percy Adamson would cooperate in the management of the business, with James H. Adamson exercising a general supervision and control of the business and Percy Adamson devoting all of his time and attention to the conduct thereof, the profits to be shared equally between them.

"Second: That the said copartnership entered upon the transaction of business as aforesaid in November, 1925.

"Third: That, pursuant to the said partnership agreement and various modifications thereof, James H. Adamson and Percy Adamson conducted said business until on or about November 1, 1931, when without the consent of James H. Adamson Percy Adamson assumed exclusive management of the partnership affairs; and that on or about March 24th, 1934 Percy Adamson repudiated any partnership obligation."

"Conclusion of Law

"First: That an accounting by the parties in respect of the assets of the copartnership found shall be taken and stated."

Now, after hearing Neilson Olcott, Esq., of counsel for James H. Adamson, plaintiff in the first above entitled action and a defendant in the second above entitled action, and Charles H. Tuttle, Esq., and George Thoms, Esq., of counsel for Percy Adamson, a defendant in the first above entitled action; and Robert P. Levis, Esq., of counsel for Superior Seating Company, a defendant in the first above entitled action and for Thomas Adamson, plaintiff in the second above entitled action, and due deliberation having been had thereon, the undersigned hereby decides and finds as follows:

FINDINGS OF FACT

1. That at various times between 1926 and 1930 the [22] defendant Percy Adamson represented to the plaintiff James H. Adamson and others that he had conceived novel ideas of commercial value relating to yarns some of which might be exploited as secret processes or by means of patents; that all such ideas were dealt with by the plaintiff James H. Adamson and the defendant Percy Adamson as the property of the said copartnership.

2. That on or about May 24, 1928, the defendant Percy Adamson by an agreement in writing purported to grant to Wabasso Cotton Mills the exclusive license to use in the dominion of Canada a secret process invented by Percy Adamson for mercerizing yarn in consideration of certain royalties to be paid to said Percy Adamson; that pursuant to said agreement said Wabasso Cotton Mills paid royalties of $11,250.00, all of which were dealt with by the plaintiff James H. Adamson and the defendant Percy Adamson as the property of the said copartnership.

3. That in the year 1930 the defendant Percy Adamson conceived the idea of an elastic yarn and on July 30, 1930 filed in the United States Patent office an application for a patent thereon; that between July 1930 and June 1931, experimental and development work in connection with said idea was conducted and on June 11, 1931, a new application for a patent was filed by said Percy Adamson in the United States Patent Office, which application was a continuation in part of said application filed July 30, 1930; that United States Letters Patent No. 1,822,847 covering an elastic yarn were issued on such application on September 9, 1931.

4. That the said copartnership paid the expenses of prosecuting said patent applications and in addition thereto incurred liability for development and experimental ex- [23] penses in connection therewith amounting to more than $10,000.

5. That at all times prior to November 1, 1931, the said invention was dealt with by the plaintiff James H. Adamson and the defendant Percy Adamson as the property of said copartnership.

6. That the elastic yarn described in said patent and patent applications was and is known as "Lastex"; that on or about April 9, 1931, the said copartnership filed in the United States Patent Office an application for the registration of a trade-mark for use in connection with the sale of such yarn, which trade-mark consisted of the word "Lastex" in a distinctive style of printing; that said trade-mark was duly registered on May 8, 1931, as the property of said copartnership.

7. That on or about April 10, 1931, the defendant Percy Adamson entered into two agreements in writing

with the United States Rubber Company, whereby in consideration of a license to practice said invention and other consideration including the agreement of said Percy Adamson to procure the assignment to the United States Rubber Company of said trade-mark, the United States Rubber Company agreed to pay to said Percy Adamson certain royalties and commissions; that said contracts were made simultaneously and as a single transaction.

8. That payment was made by the United States Rubber Company pursuant to said contracts dated April 10, 1931, covering commissions earned between June 1931 and December 1931, and all such payment was dealt with by the plaintiff James H. Adamson and the defendant Percy Adamson as the property of said copartnership. [24]

9. That on or about January 2, 1932, the defendant Percy Adamson and the said United States Rubber Company entered into two contracts in writing, copies of which are hereto annexed marked respectively Exhibits "A" and "B"; that said contracts were made simultaneously and as a single transaction; that said contracts were made in substitution for and superseded the said contracts made April 10, 1931.

10. That on or about July 7, 1931, in pursuance of said agreement made by defendant Percy Adamson with the United States Rubber Company on April 10, 1931, the said copartnership assigned to the United States Rubber Company the trade-mark aforesaid.

11. That James H. Adamson, Percy Adamson and Thomas Adamson are brothers.

1. That on or about June 21, 1932, defendant Percy Adamson represented to the plaintiff James H. Adamson

that he would apply the interest of James H. Adamson in the business of said copartnership to paying or securing the payment of indebtedness of said James H. Adamson to American Seating Company, part of which indebtedness was represented by a note in the principal amount of $100,000. made by said James H. Adamson and his wife Minnie C. Adamson. That at the time said representation was made the defendant Percy Adamson was in possession of substantial profits of said copartnership distributable to said James H. Adamson, and at all times thereafter was in possession of profits distributable to James H. Adamson, the amount of which will appear from the account taken and stated herein.

13. That at all times after August 1, 1932, the American Seating Company held as collateral security for the said note made by James H. Adamson and Minnie G. Adamson [25] the following:

29 bonds of Larchmont Shores, Inc., of the face value of $1,000. each

86 shares of stock without par value 30 Post Road Realty Corporation

67 shares without par value of Beldale Realty Corporation

80 shares of stock of Directors Building Corporation Preferred Stock, ctf. No. P119

40 Directors Building Corporation Class "B" non-voting common stock, ctf. No. B131

60 Securities Conversion Company, Inc., Preferred Stock, ctf. No. 120

30 Securities Conversion Company, Inc., common stock, ctf. No. 95

25 Security Associates, Inc., Preferred stock, ctf. No. 300

25 Security Associates, Inc., Common stock, ctf. No. 435

$29,000 Larchmont Shores, Inc., debenture bonds

86 30 Post Road Realty Corporation common stock

50 Trading and Reorganizing Corporation $3.00 Preferred stock

50 Trading and Reorganizing Corporation Common stock

Mortgage made by Hesselton Realty Corporation to Larchmont Shores, Inc., given to secure the sum of $4,147.50, dated November 2, 1928, covering premises known as lots Nos. 58, 59 and 60, in block 106A, Village of Larchmont, Town of Mamaroneck, Westchester County, N. Y., as shown on a certain map entitled "Second Amended Map of Larchmont Shores, Section No. 3, Larchmont, Westchester County, N. Y.,"

Mortgage made by Hesselton Realty Corporation to Larchmont Shores, Inc., given to secure the sum of $4,147.50, dated November 2, 1928, covering premises known as lots Nos. 61, 62 and 63, in block 106A, Village of Larchmont, Town of Mamaroneck, Westchester County, N. Y., as shown on a certain map entitled "Second Amended Map of Larchmont Shores, Section No. 3, Larchmont, Westchester County, N. Y.," dated August 20, 1928.

Mortgage made by Howell C. Perrin to Larchmont Shores, Inc., given to secure the sum of $8,595.00 dated January 4, 1928, covering premises as follows: Lots 134, 135, 136 and 137 in Block 108, Village of Larchmont, Town of Mamaroneck, Westchester County, N. Y., as shown on a map entitled "Amended Map of Larchmont Shores, Section No. 3, Larchmont, Westchester, N. Y." survey by Guy Vroman, C. E., October 20, 1927.

100 Shares of the common stock of Superior Seating Company, Inc., a New York corporation. [26]

Second mortgage in the principal amount of $20,000., on the residence property occupied by the said James H. Adamson in the Village of Larchmont, Town of Mamaroneck, County of Westchester, State of New York, known as the Cedar Island property.

14. That between August 1, 1932 and March 1, 1934, said Percy Adamson paid to the American Seating Company on behalf of James H. Adamson, the sum of $35,000.

15. On or about March 4, 1935, said Percy Adamson and Thomas Adamson, plaintiff in the second above entitled action, fraudulently conspired and agreed that said Percy Adamson should accept an offer made by the American Seating Company to sell the said $100,000. note made by said James H. Adamson and the said Minnie C. Adamson with the collateral security therefor, together with all of the right, title and interest of American Seating Com-

pany in and to certain written agreements made by the American Seating Company as follows:

(i) on August 1, 1932 with James H. Adamson and Superior Seating Company, Inc.

(ii) on August 9, 1932 with Percy Adamson

(iii) on July 14, 1933 with Percy Adamson

(iv) on July 14, 1933 with James H. Adamson

subject, however, to certain exceptions, qualifications and reservations as set forth in an agreement in writing between American Seating Company and Thomas Adamson, dated March 4, 1935, a copy of which is hereto annexed and marked Exhibit "C," for the sum of $40,000., payable as follows:

$5000. in cash and the balance in six promissory notes made by said Thomas Adamson and endorsed by said Percy Adamson, as follows:

Dated	Due	Amount
3/4/35	7/20/35	$5,000.00
3/4/35	10/20/35	5,000.00
3/4/35	1/20/36	5,000.00
3/4/35	4/20/36	5,000.00
3/4/35	7/20/36	7,500.00
3/4/35	10/20/36	7,500.00

[27]

and that when so purchased said note and collateral should be delivered to said Thomas Adamson with the purpose of creating the false appearance that said Thomas Adamson was the owner and holder thereof in order to prevent the said James H. Adamson from offsetting against said note his claims against said Percy Adamson arising out

of the said copartnership. That pursuant to said conspiracy said note and collateral were so purchased by said Percy Adamson and delivered to said Thomas Adamson who holds the same as the agent of said Percy Adamson.

16. That on or about March 15, 1935, said Percy Adamson and said Thomas Adamson, pursuant to said conspiracy caused a pretended sale of the collateral for said note to be held, pursuant to which said collateral was delivered to said Thomas Adamson in consideration of said Thomas Adamson crediting on the said note the sum of $1,000.

17. That on June 5, 1935, there was received in satisfaction of said second mortgage on the said residence property known as the Cedar Island property the sum of $19,729.73; that by an agreement in writing between said Thomas Adamson and the said James H. Adamson said sum was deposited in The National City Bank of New York, subject to the joint control of the attorneys for the said James H. Adamson and the said Thomas Adamson, to be held in escrow pending the determination in this action of the equitable ownership of said second mortgage, on the making of which determination it was agreed between the parties that said sum should be paid to the party held to be equitably entitled thereto.

18. That on or about July 5, 1935, said Thomas Adamson obtained a judgment against the said Minnie C. Adamson on said note in Supreme Court, Kings County, in the amount of $105,727.05 and on May 20, 1937, obtained an additional judgment against said Minnie C. Adamson for costs on affirmance of an appeal from said judgment in the amount of $56.20. [28]

19. That the account submitted by the defendant Percy Adamson herein is incorrect in the following particulars:

(a) Commissions and royalties earned after November 1, 1931, from the United States Rubber Company pursuant to said four contracts dated April 10, 1931 and January 2, 1932, are not accounted for. The total amount of said royalties earned up to and including September 30, 1937 was $406,868.95 and the total amount of said commissions earned up to and including December 31, 1936, plus the twelve monthly retainer payments of $1,000.00 each for the year 1937, was $191,044.76, of which $7,807.94 is included in Percy Adamson's account herein, making the total additional amount of royalties and commissions to be accounted for $590,825.77.

(b) Payments shown by the books to have been received by Adamson Brothers Company from Wabasso Mills as earnings of the Partnership, amounting to $11,250.00 are erroneously credited to the defendant Percy Adamson.

(c) Payments shown by the books to have been received by Adamson Brothers Company from Celanese Company of America as earnings of the partnership, amounting to $9,500. are erroneously credited to the defendant Percy Adamson.

(d) Defendant Percy Adamson has failed to charge as an expense of the business of Adamson Brothers Company, and has erroneously charged to himself, payments amounting to $1,216.27 shown by the books to have been made to Paul Kolisch for services rendered to the part-

nership in connection with Lastex patent and trade-mark and charged on the books to expenses of the business.

(e) The said contracts between Percy Adamson and United States Rubber Company, dated January 2, 1932, which are as- [29] sets of the partnership, are not included in the assets for which the defendant Percy Adamson is accountable.

(f) Defendant Percy Adamson has failed to charge himself and credit plaintiff with the $100,000. note made by plaintiff James H. Adamson and Minnie C. Adamson, dated May 1, 1931, together with the collateral deposited with the American Seating Company therefor, which note and collateral were acquired by Thomas Adamson pursuant to the contract between Thomas Adamson and American Seating Company, dated March 4, 1935.

(g) Defendant Percy Adamson has failed to credit himself and to charge plaintiff James H. Adamson with one-half of the sums of $2,000.00 and $3,700.00, respectively, representing money shown by the books to have been paid by Adamson Brothers Company to Seth Adamson and charged on the books to the plaintiff James H. Adamson.

(h) Defendant Percy Adamson has failed to credit plaintiff James H. Adamson with advances shown by the books to have been made to Adamson Brothers Company through plaintiff's proprietary business Superior Seating Company, amounting to $9,455.00.

(i) Defendant Percy Adamson has failed to charge himself with interest on the excess of

(1) amounts withdrawn from the partnership by the defendant after the defendant's wrongful appro-

priation of exclusive control of the firm's assets on or about November 1, 1931; over

(2) the amount of payments to plaintiff or for the plaintiff's account after November 1, 1931, plus defendant's salary at the rate of $7,800.00 a year.

(j) Defendant Percy Adamson has failed to credit his account with $37,675.00 to which the books show he was entitled as salary.

(k) Defendant Percy Adamson has erroneously charged [30] to himself $1,603.83, which by agreement of the parties was charged to profit and loss as of December 31, 1926, and is so shown on the books.

(l) Defendant Percy Adamson has erroneously charged to the plaintiff $955.00 of the amount on Schedule "8" of the account, said sum of $955. being the amount of payments included in said schedule, which by agreement of the parties was charged to expenses and is so shown on the books.

(m) Defendant Percy Adamson has erroneously charged to the plaintiff James H. Adamson $1,140.00, the amount shown on Schedule "10-B" of the account, which by agreement of the parties was charged to expenses and is so shown on the books.

(n) Defendant Percy Adamson has erroneously charged to the plaintiff James H. Adamson $3,955.00, the amount shown on Schedule "9" of the account as payments to Harold C. Adamson, which by agreement of the parties was charged to expenses and is so shown on the books.

(o) Defendant Percy Adamson has erroneously charged to the plaintiff James H. Adamson $950.00 of the amount shown on Schedule "6" of the account, said sum of

$950.00 being the amount of payments included in said Schedule, which by agreement of the parties was charged to expenses and is so shown on the books. The items of said sum of $950.00 are as follows:

June 20, 1927	Cash	C.D. 65	$125.00
July 19, 1927	Cash Travelling Expenses	C.D. 67	135.00
Nov. 25, 1927	Check	C.D. 93	100.00
Dec. 13, 1927	Check	C.D. 95	90.00
Jan. 16, 1928	Check	C.D. 97	50.00
Feb. 10, 1928	Check	C.D. 99	150.00
June 4, 1928	Cash	C.D. 107	100.00
June 26, 1928	Cash	C.D. 107	100.00
July 14, 1928	Cash	C.D. 113	50.00
Oct. 27, 1928	Check	C.D. 119	50.00

[31]

The net equity of both partners in the property and assets of the copartnership as shown by the balance sheet as of October 31, 1931, Exhibit "A" in the account filed by Percy Adamson herein, is $56,373.55, which is the amount for which Percy Adamson would be chargeable without giving effect to the corrections hereinbefore in this finding set forth. In addition to the charges and credits hereinbefore in this finding set forth Percy Adamson is entitled to the credits of $35,000. and $15,000. shown in Schedule 10-A of the account herein, and also to a credit of one-half of the amount of salary at the rate of $7,800. a year from November 1, 1931 to December 31, 1937, amounting to $24,075.00, which amount should correspondingly be charged to James. Annexed hereto marked Exhibit "D" is a summary statement of the account submitted by the defendant Percy Adamson giving

effect to all of the foregoing matters. Said summary statement charges the defendant with royalties earned under the contract with the United States Rubber Company, Exhibit "A," throughout the period ending September 30, 1937, and with retainer payments at the rate of $1,000. a month pursuant to the contract with the United States Rubber Company, Exhibit "B," for the entire calendar year 1937, but does not include any royalties earned pursuant to the said contract Exhibit "A" after September 30, 1937, nor any commission or bonus under said contract Exhibit "B" for any period after December 31, 1936, except monthly retainer payments aggregating $12,000. for 1937.

CONCLUSIONS OF LAW

1. The partnership accounts for the period referred to in Exhibit "D" hereto annexed, should be settled and allowed as filed and adjusted by said Exhibit "D." [32]

2. Each of the objections of the plaintiff James H. Adamson to the account submitted by the defendant Percy Adamson, "1" to "15" inclusive, is sustained, except that objection "1" is sustained only to the extent indicated in Finding of Fact "19," and except that the interest chargeable to defendant Percy Adamson on the excess of

> (1) amounts withdrawn from the partnership by the defendant after the defendant's wrongful appropriation of exclusive control of the firm's assets on or about November 1, 1931; over

(2) the amount of payments to plaintiff or for the plaintiff's account after November 1, 1931, plus defendant's salary at the rate of $7,800.00 a year,

should be simple interest at the rate of 4% per annum.

3. Said copartnership was prior to the making of the aforesaid contracts with the United States Rubber Company the owner of United States Letters Patent No. 1,822,847, and the Lastex trade-mark and is now the owner of the contracts between Percy Adamson and the United States Rubber Company, Exhibits "A" and "B" dated January 2, 1932.

4. Judgment should be made herein awarding the title to the interest of the partnership in said contracts to the respective partners as follows: James H. Adamson and Percy Adamson are each entitled to an undivided one-half share as a tenant in common in the contract Exhibit "A" and to all payments due or to grow due under said contract covering the period subsequent to September 30, 1937, and to an undivided one-half share as a tenant in common in said contract Exhibit "B" and to all payments due or to grow due thereunder covering the period after December 31, 1936, excluding salary of $12,000. a year paid to Percy Adamson for the calendar year 1937, which is embraced in the amount herein, and excepting that out of any payments made pursuant to said contract for any year after 1937 Percy Adamson shall [33] be entitled to the first $7,800. paid in each year, and only the balance over that sum shall be divided between the parties.

5. In addition to said undivided interest in said contracts with the United States Rubber Company, Exhibits "A" and "B," in accordance with the provisions of Conclusion of Law No. "4" hereof, plaintiff James H. Adamson is entitled to judgment against the defendant Percy Adamson for the sum of Two Hundred Seventy-one Thousand Forty-four and 92/100 Dollars ($271,044.92). In addition to any other remedy or remedies provided by law for the collection of said judgment, the amount thereof, or so much thereof as shall at any time remain unpaid, should be charged upon the share of Percy Adamson in the said contracts.

6. Thomas Adamson holds the said note of James H. Adamson and Minnie C. Adamson, together with the collateral therefor, including all of his right, title and interest in the said bank deposit of $19,729.73, and in and to the said two judgments rendered in Supreme Court, Kings County in favor of Thomas Adamson against Minnie C. Adamson, as follows: On July 5, 1935, for $105,727.05, and on May 20, 1937 for $56.20, as trustee for James H. Adamson. Upon the transfer of such note and collateral to the plaintiff James H. Adamson, Percy Adamson will be entitled to a credit upon the judgment herein in the amount of $25,000.

7. Plaintiff James H. Adamson is entitled to judgment providing that the defendant Percy Adamson be directed to execute and deliver to the plaintiff James H. Adamson within ten (10) days after the entry hereof, an

assignment of the undivided share in said contracts, Exhibits "A" and "B" in accordance with Conclusion of Law No. "4" hereof, such assignment to be by way of confirmation and further assur- [34] ance of the title to such undivided share to be awarded by the judgment herein; and that the plaintiff Thomas Adamson and the defendant Percy Adamson be directed within ten (10) days after the entry hereof to deliver to the plaintiff James H. Adamson the said note for $100,000., and the collateral therefor, as set forth in Finding of Fact No. "13" hereof, together with an assignment in due form of all of the right, title and interest of said Thomas Adamson therein, and also of an assignment of two judgments rendered in Supreme Court, Kings County in favor of said Thomas Adamson and against said Minnie C. Adamson, as follows: on July 5, 1935 for $105,727.05, and on May 20, 1937 for $56.20, and that Thomas Adamson procure Robert P. Levis, his attorney to join with John H. Jackson, attorney for James H. Adamson in paying to James H. Adamson, or his attorneys, the sum of $19,729.73 now on deposit in The National City Bank of New York, upon the plaintiff James H. Adamson executing and delivering to the attorney for Percy Adamson a written stipulation that Percy Adamson be credited with the sum of $25,000., as a payment on account of the judgment.

8. Plaintiff James H. Adamson is entitled to his costs to be taxed.

9. Said judgment shall provide that any party may apply at the foot thereof for such relief as to the Court may seem just in order to provide for the enforcement thereof.

Let judgment be entered accordingly.

Dated: New York City, January 8th, 1938.

/s/ HAROLD S. MEDINA
Referee [35]

No. 8438 (Comparing Desk)

State of New York,)
County of New York,) ss.:

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court, New York County, Do Hereby Certify, That I have compared the preceding with the original

Decision

filed in my office Jan'y. 11, 1938 and that the same is a correct transcript therefrom, and of the whole of such original.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, this 7 day of Oct. 1943.

/s/ ARCHIBALD R. WATSON
County Clerk and Clerk of the Supreme Court,
New York County [36]

[EXHIBIT "B"]

Certificate No. 5449 B

Fee $4.50
Stub No. 10244
Cashier N

State of New York
County of New York—ss.

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court, New York County,

Do Hereby Certify, that I have compared the within photographic copy of a

JUDGMENT

entitled

JAMES H. ADAMSON,

vs.

PERCY ADAMSON, et ano

the original of which is filed in my office, under

Index Number 19023-1934
File Number .....
Date Filed July 8, 1938

and that such photographic copy is a correct transcript thereof and of the whole of said original.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 6th day of Oct., 1943.

(Seal) /s/ ARCHIBALD R. WATSON

County Clerk and Clerk of the Supreme Court,
New York County [37]

SUPREME COURT : NEW YORK COUNTY

———————————————X

James H. Adamson,
105 West 40th Street :
New York City,

Plaintiff,

– against – :

Percy Adamson,
1790 Broadway, :
New York City,

Defendant,

and :

Superior Seating Company, Inc.,
105 West 40th Street, :
New York City,

Defendant.

———————————————X JUDGMENT

Thomas Adamson, #19023/1934
2074 East 26th Street, :
Brooklyn, New York,

Plaintiff, :

– against –

Superior Seating Company, Inc., :
Lillian Mandel and Jacob Klausner, :
105 West 40th Street, :
New York City,

Defendants,

and :

James H. Adamson,

Defendant. :

———————————————X

The issues in the above entitled action with respect to which a new trial was ordered by an order of the Appellate Division, First Department, entered February 9, 1937, upon which judgment was entered in the Office of the Clerk of this Court on February 11, 1937, having been duly referred to Harold R. Medina, Esq., as Referee to hear and determine, by order made at Special Term, Part III of this Court, dated the 19th day of March 1937, upon the consent of all parties to the action; and the said order of the Appellate Division and the judgment entered thereon having [38] thereafter been resettled, and the issues with respect to which a new trial was ordered by said resettled order of the Appellate Division having thereafter been referred to said Harold R. Medina, Esq., as Referee to hear and determine, by order made at Special Term, Part III of this Court, dated the 4th day of March, 1937, likewise upon the consent of all the parties to the action; and the account of the defendant Percy Adamson having been filed with the Referee on or about the 15th day of April 1937; and objections of the Plaintiff James H. Adamson to said account having been filed with the Referee on or about the 26th day of April 1937; and the trial of said issues having duly taken place before the Referee, and he having duly made his report herein setting forth his Findings of Fact and Conclusions of Law, and directing judgment as hereinafter specified, and said report having been duly filed in the Office of the Clerk of the County of New York on January 11, 1938, and the costs and disbursements of plaintiff James H. Adamson having been duly adjusted,

It is now Ordered, Adjudged and Decreed:

1. That the partnership accounts for the period referred to in Exhibit "D" annexed to the decision herein, should be settled and allowed as filed and adjusted by said Exhibit "D."

2. That James H. Adamson and Percy Adamson are each hereby awarded an undivided one-half share as a tenant in common in the contract between Percy Adamson and the United States Rubber Company, dated January 2, 1932, a copy of which is annexed to the decision herein marked Exhibit "A," and to all payments due or to grow due under said contract, [39] covering the period subsequent to September 30, 1937, and to an undivided one-half share as a tenant in common in the contract between Percy Adamson and the United States Rubber Company, dated January 2, 1932, a copy of which is annexed to the decision herein marked Exhibit "B" and to all payments due or to grow due thereunder covering the period after December 31, 1936, encluding salary of $12,000. a year paid to Percy Adamson for the calendar year 1937, which is enbraced in the account herein, and excepting that out of any payments made pursuant to said contract for any year after 1937 Percy Adamson shall be entitled to the first $7,800. paid in each year, and only the balance over that sum shall be divided between the parties.

3. That in addition to said undivided interest in said contracts the plaintiff James H. Adamson do recover of the defendant Percy Adamson the sum of Two Hundred Seventy-one Thousand Forty-four and 92/100 Dollars ($271,044.92), together with interest on the sum awarded

by the report, to wit: $271,044.92, from January 11, 1938, amounting to $7679.61 and the costs and disbursements of the plaintiff James H. Adamson as taxed herein amounting to $5689.60 making in the aggregate the sum of $284,414.13 and have execution therefor. In addition to any other remedy or remedies provided by law for the collection of said judgment, the amount thereof, or so much thereof as shall at any time remain unpaid, is hereby charged upon the share of Percy Adamson in the said contracts.

4. That defendant Percy Adamson is hereby directed [40] to execute and deliver to the plaintiff James H. Adamson within ten (10) days after the entry hereof, an assignment of the undivided share in said contracts Exhibits "A" and "B" in accordance with paragraph "2" hereof, such assignment to be by way of confirmation and further assurance of the title to such undivided share.

5. That Thomas Adamson, plaintiff in the second above entitled action, and the defendant Percy Adamson are directed within ten (10) days after the entry hereof to deliver to the plaintiff James H. Adamson the note for $100,000. made by plaintiff James H. Adamson and Minnie C. Adamson to the American Seating Company and the collateral therefor as set forth in Finding of Fact No. "13" of the decision herein, together with an assignment in due form of all of the right, title and interest of said Thomas Adamson therein, including an assignment of two judgments rendered in Supreme Court, Kings

County in favor of said Thomas Adamson and against said Minnie C. Adamson, as follows: on July 5, 1935 for $105,727.05, and on May 20, 1937 for $56.20, and that Thomas Adamson procure Robert P. Levis, his attorney, to join with John H. Jackson, attorney for James H. Adamson in paying to James H. Adamson, or his attorneys, the sum of $19,729.73 now on deposit in The National City Bank of New York, upon condition that the plaintiff James H. Adamson simultaneously execute and deliver to the attorney for Percy Adamson a written stipulation that Percy Adamson be credited with the sum of $25,000. as a payment on account of this judgment.

6. That any party may apply at the foot hereof for [41] such relief as to the Court may seem just in order to provide for the enforcement thereof.

Dated: July 8, 1938.

/s/ ARCHIBALD R. WATSON
Clerk.

The foregoing judgment approved as to form.

/s/ HAROLD S. MEDINA
Referee.

Certified Copy Issued—P
Fee Paid.....
Date le/SH
County Clerk, N. Y. Co.
By ..... [42]

File No. 19023 Year 1934
Supreme Court : New York County

James H. Adamson,
Plaintiff,
vs.
Percy Adamson,
Defendant,
and
Superior Seating Company, Inc.,
Defendant.

Fee paid $4.75
Stub No. 24968
July 8, 1938
County Clerk N.Y. Co.
By B. H.
Cashier

Thomas Adamson,
Plaintiff,
vs.
Superior Seating Company, Inc.
et al.,
Defendants,
and
James H. Adamson,
Defendant.

JUDGMENT

Filed and Docketed July 8, 1938—
1:05 P.M.

Recorded
Photostat Div.
Jul. 12, 1938

Hall, Cunningham, Jackson & Haywood
Attorneys for James H. Adamson
22 East 40th Street
Borough of Manhattan
City of New York [43]

EXHIBIT "C"

This Agreement, made in the City of New York, State of New York, on October 20th, 1939, by James H. Adamson, residing in Rye, New York, (hereinafter called the "First Party"), William Edwin Hall, Warren W. Cunningham, John H. Jackson, Alfred W. Haywood and Chester M. Patterson, partners engaged in the practice of law, at No. 22 East 40th Street, in the City and County of New York, under the firm name and style of Hall, Cunningham, Jackson & Haywood, Esqs., (hereinafter called the "Second Parties"), Percy Adamson, residing in Purchase, New York, (hereinafter called the "Third Party") and United States Rubber Company, a corporation duly organized, created and existing under and by virtue of the laws of the State of New Jersey, duly authorized to do business in the State of New York, with offices at No. 1790 Broadway, Manhattan Borough, New York City, (hereinafter called the "Fourth Party");

Witnesseth:

Whereas, on or about May 14, 1934, the First Party, as plaintiff, by the Second Parties, as his attorneys, commenced an action, bearing index number 19023/34, in the Supreme Court, New York County, against the Third Party, as defendant, wherein judgment was demanded for the dissolution of a partnership alleged to exist between the First and Third Parties, and for an accounting of the affairs and property thereof; and

Whereas, in the said action the First Party claimed, further, that the partnership was the sole owner of: (I) the certain trade mark "Lastex" and the registration thereof; (II) the certain invention for which applications were

filed in the United States Patent Office on July 30, [44] 1930 and June 11, 1931, respectively, and for which United States Letters Patent number 1,822,847 were issued under date of September 9, 1931, together with Letters Patent of Foreign Countries, issued thereon, and applications therefor; (III) the certain contract dated January 2, 1932, made by and between the Third and Fourth Parties, hereinafter called the "License Agreement," pursuant to which, among other things, the Third Party granted to the Fourth Party an exclusive license under United States Patent No. 1,822,847 and Canadian Patent No. 317,346, and under any corresponding patents, and applications for patents, granted by, or filed in, any Countries foreign to the United States and Canada, and the Fourth Party agreed to pay to the Third Party certain royalties, and the Third Party agreed, upon demand, to assign to the Fourth Party any and all of said patents and applications upon conditions stated in the said "License Agreement," which contract is hereby incorporated in and made part of this agreement by reference; and (IV) the certain contract dated January 2, 1932, made by and between the Third and Fourth Parties, hereinafter called the "Service Agreement," under which, among other things, the Third Party was engaged by the Fourth Party to sell, for the Fourth Party, and to promote the development and sale, by the Fourth Party, of certain elastic yarns and articles made thereof, and the Fourth Party agreed to pay to the Third Party certain compensation for such services, as therein provided, which contract is hereby incorporated in, and made part of this agreement by reference; and

Whereas, the issues in the said action ultimately were resolved in favor of the First Party and against the Third Party by Harold R. Medina, Esq., who, [45] theretofore, by order made and entered therein, had been duly appointed Referee to hear and determine, and who, on December 31, 1937, rendered his opinion in the case, and on January 8, 1938 made his report wherein he set forth his Findings of Fact and Conclusions of Law; and

Whereas, the said action thereafter was settled by the execution and exchange of certain writings, including: (I) a memorandum of agreement, dated February 23, 1938, made by and between the First and Third Parties, consented to by the Fourth Party; (II) a letter agreement, dated February 23, 1938, made by and between the First and Third Parties; and (III) a stipulation, dated February 23, 1938, made by and between the then respective Atorneys for the First and Third Parties, with the authorization and approval of the said First and Third Parties noted thereon, all of which are incorporated in and made part of this agreement by reference; and

Whereas, on or about July 8, 1938, judgment was entered in the said action, wherein and whereby, among other things, it was directed that the First Party recover of the Third Party the sum of $271,044.92, with interest, amounting to $7,679.61, and costs and disbursements taxed at $5,689.60, making an aggregate of $284,414.13, in all, and have execution therefor, which said judgment, thereafter, and by order made on or about August 11, 1938, was modified and amended so as to indicate at the foot thereof all of the certain terms and provisions of settlement contained in the said writings executed and exchanged, as aforesaid; and

Whereas, in consideration of legal services theretofore rendered by them in the certain action aforesaid, [46] the Second Parties, by the agreement of the First Party, were given a certain interest in and to the certain action, judgment, and settlement, aforesaid, in pursuance of which an assignment was executed in their favor by the said First Party, a copy of which is annexed hereto, marked "Exhibit A," and notice thereof given to the Third and Fourth Parties by writings dated January 30, 1939; and

Whereas, thereafter, because of differences regarding construction of said writings executed and exchanged, as aforesaid, as well as in certain other matters, the Third Party, as plaintiff, caused five separate actions to be instituted in the Supreme Court, Westchester County, four against the First Party, as defendant, and one against the Superior Seating Company, Inc., of No. 105 West 40th Street, Manhattan Borough, New York City, as defendant; and

Whereas, the five certain actions aforesaid thereafter were settled by agreement dated September 11, 1939, made by the First, Second and Third Parties hereto, together with the said Superior Seating Company, Inc., by the terms of which the Third Party undertook to pay to the First Party the sum of $21,447.56, in installments as therein specified, a copy of which agreement is annexed hereto marked "Exhibit B"; and

Whereas, the parties hereto have agreed upon the bargain, sale, transfer and assignment by the First and Second Parties of their certain rights, hereinbefore mentioned, but only upon the terms and conditions hereinafter provided; and

Whereas, in consideration of the representations, undertakings, and actions of the First and Second Parties, herein stated, and in consideration of the execution, [47] and exchange by and between the Third and Fourth Parties, contemporaneously herewith, of a certain additional agreement, the Fourth Party has agreed to make the certain payments hereinafter provided;

Now, Therefore, in consideration alike of the foregoing, and of the following recitals, representations and warranties, and of the several and mutual covenants, promises and agreements herein contained, and of the sum of One ($1.00) Dollar, lawful money of the United States, by each of the parties hereto to the other, and others, in hand paid, the receipt whereof is hereby severally acknowledged, confessed and admitted by each of them, the parties hereto do hereby severally covenant and agree as follows, each of the parties hereto agreeing for himself or itself and for no other parties hereto;

First: (A) That the First Party does hereby bargain, sell, assign, transfer and set over to the Third Party all of his right, title and interest in, to and under:

(I) The certain partnership which formerly existed between the said First and Third Parties under the firm name and style of Adamson Bros. Company, as well as the certain corporation, Adamson Bros. Company, Inc., organized under and by virtue of the laws of the state of New York, which later succeeded the said partnership, and the capital stock and obligations thereof, and in all the monies, trade marks, trade names, accounts due, or to become due, and in all other assets of any kind, nature and description whatsoever, which belonged, or belongs, to

the said Adamson Bros. Company and Adamson Bros. Company, Inc., or either of them, which said assets include, or may include, among other things, the following:

(a) the reversionary or other right in the certain trade mark "Lastex" and the registration thereof;

(b) the certain invention for which applications were filed in the United States Patent Office on or about July 24, 1930 and June 11, 1931, respectively, for which United States Letters Patent No. 1,822,847 were [48] issued under date of September 8, 1931, together with all Letters Patent of Foreign Countries, issued thereon, and all applications therefor, and any and all other inventions of the Third Party, whether patented or not and whether or not heretofore assigned to the Fourth Party;

(c) the two certain contracts, both dated January 2, 1932, made by and between the Third and Fourth Parties, hereinbefore described and referred to as the "License Agreement" and the "Service Agreement," respectively, as heretofore modified.

(II) the certain judgment which was duly entered, filed and docketed under number 19023/34 in the office of the Clerk of the County of New York, on or about July 8, 1938, in favor of the First Party, and against the Third Party, and all monies due, and to grow due, thereunder, and the whole, as well as each and every part, thereof.

(B) That the Second Parties, and each of them, do hereby join with the First Party in the foregoing and do hereby bargain, sell, assign, transfer and set over to the Third Party, any and all of their, and each of their, right, title, and interest, in, to, and under, the certain things hereinbefore more particularly described in paragraph "First, subdivision (A)" hereof; and the Second Parties, and each of them, further do hereby remise, release, and forever discharge, the First, Third and Fourth Parties, and each of them, of all, and from all, and all manner of, action and actions, cause, and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, or in equity, that against the said First, Third and Fourth Parties, or any of them, the said Second Parties, or any of them, ever had, now have, or hereafter can, shall, or may, have for, upon, or by reason of any matter, cause, or thing, whatsoever, from the beginning [49] of the world up to, and including, the day of the date of this agreement.

(C) That the First Party does hereby represent to, and covenant with, the Third and Fourth Parties, and each of them, that he has not heretofore bargained, sold, assigned, transferred, or set over, or attempted to bargain, sell, assign, transfer, or set over, his right, title and interest in, to, and under the certain things hereinbefore more particularly described in paragraph "First, subdivision (A)" hereof, or any part, or parts, thereof, to any person, firm, association, or corporation, and that he has not, in any way, mortgaged, or incumbered, or at-

tempted to mortgage, or incumber, the same, or any part, or parts, thereof, and that there are no liens on, or incumbrances, of any nature, kind, or description, whatsoever, upon, his said interests, or any part, or parts, thereof, attaching thereto since the First Party acquired ownership thereof, excepting certain assignments which (initialed) JN jha dn February 23, 1938 and of he made in favor of the Second Parties, under date of / latter agreement January 30, 1939, a copy of which / is annexed hereto as "Exhibit A," which said assignment is to be paid off and satisfied simultaneously with, by, and upon, the execution of this agreement.

(D) That the Second Parties, and each of them, do hereby represent to, and covenant with, the Third and Fourth Parties, and each of them, that neither they, nor any of them, have heretofore bargained, sold, assigned, transferred, or set over, or attempted to bargain, sell, assign, transfer, or set over, their right, title, and interest, in, to, and under, the certain things hereinbefore more particularly described in paragraph "First, subdivision (A)" hereof, [50] or any part, or parts, thereof, to any person, firm, association, or corporation, and that neither they, nor any of them, have, in any way, mortgaged, or incumbered, or attempted to mortgage, or incumber the same, or any part, or parts, thereof, and, further, that there are no liens, or incumbrances, of any nature, kind, or description, whatsoever, upon their, or any of their, said interests, or any part, or parts, thereof, except the certain assignment which was made in their favor by the First Party under date of January 30

1939, a copy of which is annexed hereto as "Exhibit A," which said assignment is to be paid off and satisfied simultaneously with, by, and upon, the execution of this agreement.

(E) That the mutual obligations of the First, Second and Third Parties, provided in the certain agreement dated September 11, 1939, made by the said First, Second and Third Parties, together with the Superior Seating Company, Inc., which agreement is annexed hereto, marked "Exhibit B," are hereby expressly reserved, and excepted herefrom, and shall continue in full force and effect notwithstanding the execution of this agrement by the several parties hereto; and that, otherwise, the First Party does hereby remise, release and forever discharge the Second, Third and Fourth Parties, and each of them, of all, and from all, and all manner of, action, and actions, cause, and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, or in equity, that against the said Second, Third and Fourth Parties, or any of them, the said First Party ever had, now has, or hereafter [51] can, shall, or may, have for, upon, or by reason of any matter, cause, or thing, whatsoever, from the beginning of the world up to, and including, the day of the date of this agreement.

(F) That the Third Party covenants to assume, pay and satisfy, or cause to be paid and satisfied, all debts and other liabilities, of any kind, or nature, whatsoever, of the certain partnership which formerly existed between the First and Third Parties under the firm name and style of Adamson Bros. Company, as well as of the cer-

tain corporation Adamson Bros. Company, Inc., organized under, and by virtue of, the laws of the State of New York, which later succeeded the said partnership; and the Third Party further covenants to save and hold harmless the First Party against any and all liability and/or claims and/or damages that the First Party may sustain, become liable, or answerable, for, or shall pay, upon or in consequence of, such debts, or other liabilities, as well as any claim of any nature by the said partnership or corporation against the First Party.

(initialed) JN JHA DN

(G) That simultaneously with the execution of this agreement, the First Party shall make, execute, and deliver to the Third Party, a satisfaction of the whole, and each and every part, of the certain judgment which was duly entered, filed, and docketed under numer 19023/34, in the office of the Clerk of the County of New York, on or about July 8, 1938, in favor of the First Party and against the Third Party, which satisfaction shall be in form suitable and proper for filing.

(H) That the First Party and the Third Party hereby mutually rescind and terminate all of said agreements made on or about February 23, 1938, including a memorandum of agreement dated said date and an agreement in the form of a letter dated said date addressed by the Third Party to the [52] First Party and accepted by the First Party; and the Second Parties hereby release and relinquish to the Third Party any and all right, title and interest which they, or any of them, have, or may have, in or to any of said agreements or in or to any payments or benefits thereunder;

(I) That the First Party and the Second Parties hereby acknowledge and warrant to and agree with the Fourth Party that neither they nor any assignee or assignees of theirs, or any other person or concern claiming through them, nor any of them, has any reversionary or other interest in said United States Patent No. 1,822,847 or any corresponding foreign patent or in any other patent or property right or rights acquired by the Fourth Party from or through the Third Party or in said trade mark "Lastex" or said registration thereof.

(J) That the First and Second Parties, and each of them, do hereby further covenant that they, and each of them will, at any time, or times, at the reasonable request of the Third and Fourth Parties, or either of them, make, execute, and deliver, every such further instrument, or conveyance, for the better, or more effectually, vesting and confirming of all of the rights, titles, interests, properties, claims and demands hereby bargained, sold, assigned, transferred, and set over, to the Third Party, or so intended to be, as by the said Third and Fourth Parties, or either of them, or either of their respective counsel, shall be advised or requested.

Second: That in consideration of the foregoing, the Fourth Party shall pay:

(A) to the Second Parties, the sum of $110,000.00, without interest, as follows: [53]

$60,000.00, simultaneously with the execution of this agreement, the receipt whereof is hereby acknowledged, confessed and admitted; $50,000.00 on January 2, 1940.

(B) to the First Party, the sum of $215,000.00, without interest, as follows:

$5,000.00 simultaneously with the execution of this agreement, the receipt whereof is hereby acknowledged, confessed and admitted;

$210,000.00 in equal installments of $2,500.00 each, the first installment on December 1, 1939, and thereafter on the 1st day of each second month until the full sum of $210,000.00 shall have been paid.

However, the First Party shall have the right to require of the Fourth Party, and the Fourth Party shall thereupon pay to the First Party, in each instance upon thirty days' notice in writing to such effect, payments of monies on account, only, however, as to each payment, to the extent, and at and between the times hereinafter indicated, which shall, when paid, reduce the principal indebtedness aforesaid, but shall not affect the continuity of the installment payments of $2,500.00 each aforesaid, as follows:

During the years 1940 and 1941, an amount, or amounts, of monies, the total of which shall not exceed $20,00.00 for the entire said period;

During the years 1942 and 1943, an amount, or amounts, of monies, the total of which shall not exceed $20,000.00 for the entire said period;

During the years 1944 and 1945, an amount, or amounts, of monies, the total of which shall not exceed $20,000.00 for the entire said period.

Third: That this agreement shall bind and inure to the benefit of the several parties hereto, and each [54] of their respective personal representatives, successors and assigns.

Fourth: That this agreement may be executed in any number of counterparts, and all of such counterparts shall constitute but one and the same agreement.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed on the day and year first above written.

S/ James H. Adamson (L.S.)

HALL, CUNNINGHAM, JACKSON & HAYWOOD, ESQS.

S/ William E. Hall

S/ Warren W. Cunningham

S/ John H. Jackson

S/ Chester M. Patterson

S/ Alfred W. Haywood

S/ Percy A. Adamson (L.S.)

In the Presence of:

S/ Maxwell Dopin

as to

James H. Adamson

John H. Jackson

Percy Adamson

(Signatures not entirely legible.)

UNITED STATES RUBBER COMPANY

By Edward J. Coughlin

Vice President

Attest:

S/ Sue (?) Buckman

Secretary

State of New York)
: SS
County of New York)

On the 20th day of October, 1939, before me came Edward J. Coughlin, to me known, who, being by me duly sworn, did depose and say that he resides in New York, New York; that he is the Vice-President of the United States Rubber Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order.

Notary Public, Kings County
Kings Co. Clerk's No. 6, Register's No. 104
Certificates filed in
New York Co. Clerk's No. 16, Register's No. 0111
Anna Iwanowins, Notary Public
Commission Expires March 30, 1940 [55]

Exhibit "A"

Agreement made this 30 day of January 1939, by and between William E. Hall, Warren W. Cunningham, John H. Jackson, Alfred W. Haywood and Chester M. Patterson, copartners doing business under the firm name and style of Hall, Cunningham, Jackson & Haywood (hereinafter referred to as "Hall," and James H. Adamson (hereinafter referred to as "Adamson").

Whereas under date of February 23rd, 1938, the parties hereto entered into a letter agreement covering the

settlement of the claim of Hall against Adamson for services rendered in connection with the litigation between James H. Adamson and his brother, Percy Adamson, under which agreement Adamson gave to Hall four promissory notes, the amounts and maturity dates of which are as follows:

Note payable August 15th, 1938, in the sum of $12,500.

Note payable February 15th, 1939, in the sum of $15,000.

Note payable February 15th, 1940, in the sum of $20,000.

Note payable February 15th, 1941, in the sum of $15,000.

Whereas Adamson has, since the date of the said agreement of February 23rd, 1938, made payments on account of the first note due August 15th, 1938, in the aggregate amount of $2,000, leaving an unpaid balance thereon of $10,500;

Whereas in addition to the foregoing, Adamson is indebted to Hall for disbursements paid and incurred, in the sum of $7,000, and for additional professional services rendered to the date of this agreement in the sum of $5000; and

Whereas it is desired by the parties hereto to provide by this agreement a mutually satisfactory and exclusive method for the payment of all of the said obligations,

Now Therefore, in consideration of the mutual promises herein contained, and of other good and valuable [56] consideration by each of the parties hereto to the other

in hand paid, receipt whereof is hereby acknowledged, the parties hereto have agreed and they do hereby agree as follows:

First: The obligations above mentioned, due to Hall, are divided into the following categories by which they shall be dealt with and known throughout the remainder of this agreement;

(a) The amount of $15,000, represented by the note payable February 15th, 1939, and any amounts remaining unpaid thereof from time to time, shall be known as "Category one."

(b) The amount of $20,000, represented by the note payable February 15th, 1940, and any amounts remaining unpaid thereof from time to time, shall be known as "Category two."

(c) The amount of $15,000, represented by the note payable February 15th, 1941, and any amounts remaining unpaid thereof from time to time, shall be known as "Category three."

(d) All other amounts, including the amount unpaid of $10,500 on the note due August 15th, 1938, the $7000 disbursements, and the $5000 additional fee, a total of $22,500, shall be included in a single category known as "Category four."

Second: Adamson hereby assigns to Hall, in trust nevertheless, to be applied by the said Hall, as Trustee, pursuant to the directions contained hereinafter in this agreement, all of Adamson's right to receive royalties and commissions from the United States Rubber Company, pursuant to the agreement between Adamson and Percy Adamson, approved by the United States Rubber Com-

pany, dated February 23rd, 1938, and all of Adamson's right to receive payments of royalties, commissions and principal from Percy Adamson, pursuant to his agreement with Percy Adamson, embodied in a letter from [57] Percy Adamson to Adamson, dated February 23rd, 1938.

Third: The royalties and commissions above mentioned are payable quarterly, and are expected to be received by Hall, as Trustee, quarterly on or about the first days of February, May, August and November in each year.

Out of each quarterly payment of royalties and commissions received by Hall, as Trustee, pursuant to this agreement, during the year 1939, he shall first pay
(not?)
promptly to Adamson one-half thereof, but nor more than the sum of $3000; except that if for any quarter the one-half of the said royalties and commissions paid to Adamson shall be less than $3,000, the deficiency shall be made up out of any amount by which one-half of the royalties and commissions for any subsequent quarter shall exceed $3000. Such payments to Adamson shall be known throughout the remainder of this agreement as "Adamson's quarterly share." Any payments received by Hall during the year 1939, in excess of "Adamson's quarterly share," shall be paid by Hall, as Trustee, to himself individually, and shall be applied in reduction of the amount then due in "Category one." Upon payment of "Category One" in full, any further payments received by Hall, as Trustee, in 1939, shall be applied to making up any amount by which "Adamson's quarterly share" paid in 1939 shall have fallen short of $12,000.

In the event that such payments received by Hall, as Trustee, during the year 1939, shall exceed a sum

sufficient to pay Adamson $12,000 during that year, and to pay in its entirety "Category one," that is to say, a total sum of $27,000, then any excess thereover shall be paid by Hall, as Trustee, one-third to Adamson, and two-thirds to himself in- [58] dividually, and shall be applied against the amounts remaining unpaid in "Category four."

In the event that at the end of the year 1939, Hall, as Trustee, shall not have received sufficient moneys to pay himself individually the full amount of "Category one," then any amount remaining unpaid in that category shall be added to and become a part of "Category two," for the purposes of the remaining provisions of this agreement.

Fourth: Out of each quarterly payment of royalties and commissions received by Hall, as Trustee, pursuant to this agreement, during the year 1940, he shall first pay promptly "Adamson's quarterly share," as defined in article Third hereof. Any payment received by Hall during the year 1940, in excess of "Adamson's quarterly share" shall be paid by Hall, as Trustee, to himself individually and shall be applied in reduction of the amount then due in "Category two." Upon payment of "Category two" in full, any further payments received by Hall, as Trustee, in 1940, shall be applied to making up any amount by which "Adamson's quarterly share" paid in 1939 and 1940 shall have fallen short of $12,000. a year.

In the event that such payments received by Hall, as Trustee, during the year 1940 shall exceed a sum sufficient to pay Adamson $12,000 during that year, and in addition to pay any deficiency in "Adamson's quarterly share" for 1939, and to pay in its entirety "Category two,"

then any excess shall be paid by Hall, as Trustee, one-third to Adamson, and two-thirds to himself individually, and shall be applied against the amounts remaining unpaid in "Category four." [59]

In the event that at the end of the year 1940 Hall, as Trustee, shall not have received sufficient moneys to pay himself the full amount of "Category two," then any amount remaining unpaid in that Category shall be added to and become a part of "Category three," for the purposes of the remaining provisions of this agreement.

Fifth: Out of each quarterly payment of royalties and commissions received by Hall, as Trustee, pursuant to this agreement, during the year 1941, he shall first pay promptly "Adamson's quarterly share." Any payment received by Hall during the year 1941, in excess of "Adamson's quarterly share" shall be paid by Hall, as Trustee, to himself individually and shall be applied in reduction of the amount then due in "Category three."

In the event that such sums received by Hall, as Trustee, during the year 1941 shall exceed a sum sufficient to pay Adamson $12,000 in that year, and in addition to pay any deficiency in "Adamson's quarterly share" for 1939 and 1940, and to pay in its entirety "Category three," then any excess shall be paid by Hall, as Trustee, one-third to Adamson and two-thirds to himself individually and shall be applied against the amounts remaining unpaid in "Category four."

In the event that at the end of the year 1941, Hall, as Trustee, shall not have received sufficient moneys to pay himself individually the full amount of "Category three," then any amounts remaining unpaid in that Category

shall form a new Category to be known as "Category five."

Sixth: Out of each quarterly payment of royalties and commissions received by Hall, as Trustee, pursuant to this [60] agreement, during the year 1942 or later years, he shall first pay promptly to Adamson "Adamson's quarterly share." Any such payment received by Hall quarterly, in excess of "Adamson's quarterly share" during the year 1942, shall be paid by Hall, as Trustee, to himself individually, and shall be applied in reduction of any amount then remaining unpaid in "Category five."

In the event that the sums received by Hall, as Trustee, in any quarter during the year 1942, or in any year thereafter, shall exceed a sum sufficient to pay "Adamson's quarterly share," and to pay any remaining balance in "Category five," then any excess thereover shall be paid by Hall, as Trustee, one-third to Adamson and two-thirds to himself individually, and shall be applied in reduction of any amount then remaining unpaid in "Category four."

Seventh: At such time as Hall, as Trustee, shall have received, and shall have paid to himself individually, a sum sufficient to pay all of the amounts due in all of the above mentioned categories, this assignment and agreement shall terminate, and Hall, as Trustee, shall thereupon re-assign to Adamson all of the royalties and commissions and payments herein assigned, and shall pay over to Adamson any sums received by Hall in excess of the total amount due in all categories hereunder. It is agreed that Hall is to receive under this agreement only the total amounts included in the four Categories specified in Paragraph "First" of this agreement, with-

out any additional amounts as interest, commissions, Trustee's fees or otherwise.

Eighth: Whereas this agreement is intended to vest in Hall, as Trustee, all right of Adamson to any payments due [61] from Percy Adamson as principal payments under the settlement agreement between Adamson and Percy Adamson, dated February 23rd, 1938, as well as payments of royalties and commissions to be made by said Percy Adamson, any of such principal payments, when received by Hall, as Trustee, shall be paid one-third to Adamson, and two-thirds to himself individually, and shall be applied against obligations due in "Category four" above mentioned. Adamson shall retain sole control and discretion with respect to such principal payments due from Percy Adamson, and shall have the absolue right to enter into any arrangements with Percy Adamson, which he may desire, in reduction or in settlement thereof (but no reduction of Percy Adamson's liability below $18,000. shall be made) and Hall, as Trustee, hereby agrees to follow all of the directions of Adamson with respect to such principal payments, and to execute any and all documents, consents and releases in connection therewith, which may be requested by Adamson from time to time; the only right of Hall, as Trustee, with respect to the said principal payments as against said Adamson being to receive the amount of any such payments which shall be made by Percy Adamson, and to dispose of same, as Trustee, as hereinbefore provided.

Ninth: This agreement and trust assignment supercedes in its entirety the said settlement agreement made between Hall and Adamson on February 23rd, 1938, except that the assignment by Adamson to Hall of an interest in future royalties and commissions made in that

agreement, and particularly referred to in the letter of Hall and Adamson to the City Bank Farmers Trust Company, dated February 23rd, 1938, shall continue in full force and effect. Hall agrees to [62] deliver up to Adamson for cancellation, immediately upon the execution of this agreement all of the four promissory notes herienabove described.

It is understood that Adamson is under no personal liability to Hall to make the payments hereinbefore referred to and that Hall will look solely to the assigned royalties, commissions and payments for the satisfaction of said obligations.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written.

HALL, CUNNINGHAM, JACKSON & HAYWOOD
By JOHN H. JACKSON (L.S.)
JAMES H. ADAMSON (L.S.)
James H. Adamson [63]

This Agreement, made in the City of New York, State of New York, on September 11, 1939, between Percy Adamson, residing in Purchase, New York (hereinafter called the "First Party"), James H. Adamson, residing in Rye, New York (hereinafter called the "Second Party"), Hall, Cunningham, Jackson & Hayward, of New York City (hereinafter called the "Third Parties") and Superior Seating Company, Inc., a corporation, duly organized, created and existing under and by virtue of the laws of the State of New York, with principal office at No. 105 West 40th Street, Manhattan Borough, New York City, (hereinafter called the "Fourth Party");

Witnesseth:

Whereas, on or about May 14, 1934, the Second Party, as plaintiff, by the Third Parties acting as his Attorney, commenced an action, bearing index number 19023/34, in the Supreme Court, New York County, against the First Party, as defendant, wherein judgment was demanded for a partnership accounting, which action ultimately was determined in favor of the Second Party and against the First Party, by Harold R. Medina, Esq., who theretofore, by order duly made and entered in the said action, had been duly appointed Referee to hear and determine, and who, on December 31, 1937, rendered his opinion in the case, and, on January 8, 1938, made his report, wherein he set forth his Findings of Fact and Conclusions of Law; and

Whereas, the said action thereafter was settled by the execution of three separate writings, as follows: A memorandum of agreement, dated February 23, 1938, [64] made by and between the First and Second Parties; a letter agreement, dated February 23, 1938, made by and between the First and Second Parties, and a stipulation, dated February 25, 1938, made by and between the then respective Attorneys for the said First and Second Parties, with the authorization and approval of the said First and Second Parties noted thereon, all of which are incorporated in and made part of this agreement by reference; and

Whereas, the Third Parties, by virtue of their position as such Attorneys for the Second Party and the services theretofore rendered by them for and on account of the Second Party, by agreement made by and between the said Second and Third Parties, was given an interest in

the said action and in the said settlement, by reason of which the said Third Parties are made a party to this agreement; and

Whereas, on or about January 28, 1938, the First Party, at the request of the Second and Fourth Parties, loaned to the Fourth Party the sum of $5,000.00; and

Whereas, prior to the consummation of the certain settlement aforesaid, and on or before January 31, 1938, in proceedings bearing index number 60809, brought under Section 74 of the Bankruptcy Act by the Second Party in the United States District Court, for the Southern District of New York, the Second Party prepared for each of eighteen of his creditors, a series of five promissory notes, each series aggregating the total claim allowed therein for each of his said creditors, all of the said notes dated January 31, 1938 and made payable, without interest, at the National City Bank of New York, 42nd Street Branch, New York City, on [65] February 15, 1938, May 15, 1938, August 15, 1938, November 15, 1938 and February 15, 1939, respectively, and all of which aggregating $51,685.11, subsequent to their execution by the Second Party and prior to the delivery thereof to each of the respective payees, were endorsed by the First Party, and

Whereas, the Second Party thereafter defaulted in making payment of certain of the said promissory notes, with the result that the First Party was required to make, and actually made, payments against the said several series of promissory notes, maturing on the dates and aggregating the sums, respectively, as follows: May 15, 1938—$9,444.65; August 15, 1938—$8,092.02; November 15, 1938—$8,475.29; February 15, 1939—$7,540.48, making a grand total of $33,552.44 in all; and

Whereas, the First Party, as plaintiff, caused four separate actions to be instituted against the Second Party, as defendant, in the Supreme Court, Westchester County, wherein he demanded judgments, among other things, for the certain respective aggregate sums aforesaid, theretofore paid by him against the said certain promissory notes, which had matured on the respective dates aforesaid, and, further, caused an action to be instituted in the Supreme Court, Westchester County, in his behalf, as plaintiff, against the Fourth Party, as defendant, wherein he demanded judgment for the sum of $5,000.00, theretofore loaned by him to the Fourth Party, and

Whereas, under the terms of the settlement made by and between the First and Second Parties, under date of February 23, 1938, embodied in the form of three separate [66] writings, hereinbefore described, the First Party undertook, among other things, to pay to the Second Party the sum of $75,000.00, in five annual installments of $15,000.00 each, commencing February 15, 1939, against which the said First Party, on or before April 22, 1938, paid to the Second Party amounts totalling $20,000.00; and

Whereas, in the four certain actions instituted in the Supreme Court, Westchester County, by the First Party, as plaintiff, against the Second Party, as defendant, hereinbefore referred to, the Second Party interposed defenses and counterclaims, based upon an independent, collateral, oral agreement, alleged to have been made by and between the parties prior to, and at the time of, the execution of the three certain writings aforesaid, whereunder, among other things, he included the following claims: (1) That the First Party should pay $30,000.00 towards the fees of the Third Party for legal services rendered

by the Third Party for, and on the account of, the Second Party; (II) that, notwithstanding the five annual installment payments of $15,000.00 each, to be made by the First Party to the Second Party, to commence February 15, 1939, provided in the said written agreements dated February 23, 1938, the First Party, on or before August 15, 1938, should pay to the Second Party the said sum of $75,000.00, in full; and (III) that should the First Party default in either of the foregoing undertakings then he, rather than the Second Party, should pay the certain promissory notes made by the Second Party and endorsed by the First Party, under the circumstances hereinbefore described, and thereby become entitled to receive [67] credit, to the extent thereof, by allocation against the remaining installment payments; and

Whereas, in the action instituted in the Supreme Court, Westchester County, by the First Party, as plaintiff, against the Fourth Party, as defendant, the Fourth Party interposed a defense based upon an independent collateral oral agreement, alleged to have been made by and between the parties prior to, or at the time of, the execution of the three certain writings aforesaid, whereunder it claimed that the First Party had released the Fourth Party from the debt alleged in the complaint; and

Whereas, the parties have agreed to settle all of the said five actions and to determine their differences and the issues and controversies indicated in the pleadings, affidavits and other papers in all of the said five actions;

Now, Therefore, in consideration alike of the foregoing, and of the following recitals, representations and warranties, and of the several and mutual covenants,

promises and agreements herein contained, and of the sum of One ($1.00) Dollar, lawful money of the United States, by each of the parties to the other, and others, in hand paid, the receipt whereof is hereby severally acknowledged, confessed and admitted by each of them, the parties hereto do hereby covenant and agree, as follows:

First: (a) That the Second, Third and Fourth Parties, jointly and severally, do hereby remise, release and forever discharge the First Party of all, and from all, and all manner of, causes, claims and demands, whatsoever, [68] as against the First Party which they, or any of them, ever had, now have, or which they, or any of them, can, shall, or may, have for, upon, or by reason of an independent, collateral, oral agreement, alleged to have been made, by and between the parties hereto, prior to, and at the time of the execution of the three certain writings aforesaid and, among other things, particularly including the claims made thereunder, as follows: (I) That the First Party should pay $30,000.00 towards the fees of the Third Party for the legal services rendered by the Third Party for, and on the account of, the Second Party; (II) that notwithstanding the five annual installment payments of $15,000.00 each, to be made by the First Party to the Second Party, commencing February 15, 1939, provided in the written agreements dated February 23, 1938, the First Party, on or before August 15, 1938, should pay to the Second Party the said sum of $75,000.00 in full; and (III) that should the First Party default in either of the foregoing undertakings, then he, rather than the Second Party, should pay the certain promissory notes made by the Second Party, and endorsed by the First Party, under the circumstances hereinbefore described, and thereby become entitled to

receive credit, to the extent thereof, by allocation against the remaining installment payments; and, pursuant to the foregoing, the Second and Fourth Parties, jointly and severally, do hereby specifically forever relinquish and release all manner of debts, causes, claims and demands, whatsoever, alleged in the answers, affidavits and all other papers, by way of defense, counterclaim, or otherwise, interposed in behalf of the defendants in the four certain actions instituted in the Supreme Court Westchester County, by the [69] First Party, as plaintiff, against the Fourth Party, as defendant.

Second: (a) That the Second Party does hereby covenant and agree to keep and to hold the First Part harmless of, and from, and against any and all, liability and to keep the said First Party indemnified against any and all actions, proceedings, costs, expenses, damages, claims and demands, whatsoever, which the First Party may sustain, or become liable for, by reason of his endorsements upon the said certain promissory notes, except to the extent of the payments, aggregating the sum of $33,552.44 heretofore made by the First Party on account of and against the said certain promissory notes, said sum of $33,552.44 being hereby expressly excluded herefrom.

(b) That in the event that the First Party hereafter shall be required, by judgment in a contested action, after notice to the Second Party, to make any payment, or payments, on account of, or against, the said certain promissory notes, then, and in such event, the said First Party, at his sole option, shall have the right to elect either to institute an action, or actions, and to recover a judgment, or judgments, therefor, as against the Second

Party, and to have any and all remedies thereon provided in law, or to apply such payment, or payments, and to take credit therefor against the installment payments which the First Party shall make to the Second Party, as hereinafter provided.

Third: That in additional consideration of this agreement, and of other consideration here declared to be mutual, valuable and sufficient, the First Party does hereby remise, release, and forever discharge the Fourth [70] Party of, and from, the certain debts, cause, claim and demand for the sum of $5,000.00, loaned by the First Party to the Fourth Party, on or about January 28, 1938, and the First Party does hereby relinquish, renounce and forever withdraw the summons and complaint and any and all other papers, including the said debt, cause, claim and demand, therein alleged, in the certain action instituted in the Supreme Court, Westchester County, by the First Party, as plaintiff, against the Fourth Party, as defendant.

Fourth: (a) That the First Party having heretofore made payments to the Second Party under the certain written agreements, dated February 23, 1938, of sums totalling $20,000.00 and having made certain payments against the certain promissory notes, made by the Second Party and endorsed by the First Party totalling the sum of $33,552.44, making a grand total of $53,552.44 in all, it is hereby agreed that the said grand total shall be applied in reduction of the sum of $75,000.00, required by the terms of the said certain written agreements, dated February 23, 1938, to be paid by the First Party to the Second Party in five annual installments of $15,000.00 each, to commence February 15, 1939, thus leaving a

balance due thereunder as of the date hereof amounting to the sum of $21,447.56, and that, notwithstanding the provisions of the said certain written agreements, dated February 23, 1938, the said balance of $21,447.56 shall be paid by the First Party to the Second Party, without interest, as follows:

On July 10, 1940	$1,875.00	
" October 10, 1940	1,875.00	
" January 10, 1941	1,875.00	
" April 10, 1941	1,875.00	
" July 10, 1941	1,875.00	[71]
On October 10, 1941	$1,875.00	
" January 10, 1942	1,875.00	
" April 10, 1942	1,875.00	
" July 10, 1942	1,875.00	
" October 10, 1942	1,875.00	
" January 10, 1943	1,875,00	
" April 10, 1943	822.56	

(b) That except as hereinabove modified, all of the terms, provisions and conditions contained and set forth in the memorandum agreement, dated February 23, 1938, made by and between the First and Second Parties, the letter agreement, dated February 23, 1938, made by and between the First and Second Parties, and the stipulation, dated February 23, 1938, made by and between the then respective Attorneys for the First and Second Parties, with the authorization and approval of the said First and Second Parties noted thereon, shall continue to remain in full force and effect.

Fifth: That, simultaneously with the execution of this agreement, the First and Second Parties shall execute, or shall procure their respective Attorneys to execute, and

exchange formal stipulations discontinuing, without costs, the four separate actions instituted in the Supreme Court, Westchester County, by the First Party, as plaintiff, against the Second Party, as defendant, and the action instituted in the Supreme Court, Westchester County, by the First Party, as plaintiff, against the Fourth Party, as defendant, and withdrawing and discontinuing all motions heretofore served, or made, in any of the said actions, and which presently are pending.

Sixth: That this agreement shall bind and inure to the benefit of the several parties hereto and each [72] of their respective personal representatives, successors and assigns.

Seventh: That this agreement may be executed in any number of counterparts, and all of such counterparts shall constitute but one and the same agreement.

In Witness Whereof, this agreement has been duly executed on the day and year first above written.

PERCY ADAMSON (L.S.)
JAMES H. ADAMSON (L.S.)
HALL, CUNNINGHAM, JACKSON & HAYWOOD (L.S.)
SUPERIOR SEATING COMPANY, INC.
L.S.
By JAMES H. ADAMSON Pres.

No. 4649-BH. James H. Adamson et al. vs. U. S. A. Plfs. Exhibit No. 1. Filed 1-8-1946. Edmund L. Smith, Clerk, by John A. Childress, Deputy Clerk.

[Endorsed]: Filed Jan. 8, 1946. [73]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

The above entitled matter came duly and regularly on to be heard before the undersigned, Leon R. Yankwich, one of the Judges of the above entitled court, at Los Angeles, California, on January 8, 1946, Zagon, Aaron and Sandler and Nathan Schwartz by Ray Sandler, appearing as attorneys for the plaintiffs, and Charles H. Carr, United States Attorney, E. H. Mitchell and George M. Bryant, Assistant U. S. Attorney, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, by George M. Bryant, appearing as attorneys for the defendant, the matter having been tried, and a Stipulation of Facts and oral evidence having been received, and argument of counsel having been heard, and the court being now fully advised in the premises, now makes herewith its Findings of Fact, Conclusions of Law, and Order for Judgment, to wit: [74]

FINDINGS OF FACT

I.

This action is brought to recover the sum of $2,577.52, together with interest as prescribed by law, upon the theory that certain individual incomes taxes were erroneously and illegally assessed against and collected from the plaintiffs under the Internal Revenue laws of the United States.

II.

The plaintiffs herein at all times mentioned in the complaint were and still are husband and wife residing at

Laguna Beach in Orange County, State of California, within the Central Division, Southern District of the above entitled Court.

III.

That on or about March 14, 1941, the plaintiffs filed with the Collector of Internal Revenue for the Third District of New York their joint federal income tax return for the calendar year 1940; that said return was prepared upon a calendar year basis and showed a total gross income of $42,525; that deductions were claimed against said income in the sum of $21,569.55; that the tax indicated to be due thereon was shown to be $2,489.15; that therewith plaintiffs paid to the Collector the sum of $621.29 as the first installment of said joint income taxes; that on or about March 10, 1943, and subsequent to a disallowance of plaintiffs' claim for refund described hereinafter plaintiffs paid to the Collector of Internal Revenue for the Sixth Collection District of California upon said taxes the sum of $1,000, and to the same Collector on or about April 8, 1943, plaintiffs paid as a final payment upon said taxes the sum of $867.86, together with interest in the amount of $168.11, and $1 for release of a lien filed by the Collector of Internal Revenue for the Sixth Collection District of California against the property of the plaintiffs; and that the [75] total amount paid by plaintiffs by reason of their individual income and defense tax for the year 1940, including interest and lien charges, was the sum of $2,658.26.

IV.

Plaintiffs claim that the correct amount of the tax due and owing from them was the sum of $80.74. The

United States determined that the amount of tax due is $2,589.15. The difference between the computations of the plaintiffs and the computations of the Government result from the inclusion in said return of the sum of $32,500 received by the plaintiffs from one Percy Adamson, the brother of James H. Adamson, one of the plaintiffs in this case under an agreement dated October 20, 1939.

V.

That on or about June 13, 1941, the plaintiffs filed with the Collector of Internal Revenue for the Third District of New York claim for refund which was numbered 2,639,120 in the amount of $540.55; that on October 5, 1943, the Commissioner of Internal Revenue rejected said claim for refund; that on or about December 27, 1943, plaintiffs filed a claim for refund in the sum of $2,408.41, which was numbered 2,849,066 which claim was filed with the Collector of Internal Revenue for the Sixth Collection District of California; that on July 26, 1945, the Commissioner of Internal Revenue rejected this claim for refund; and that on August 2, 1945, this action was filed.

VI.

The grounds stated in the claim for refund filed June 13, 1941, are as follows:

> Original income tax return was filed showing net income of $20,955.45. Due to error, profit on sale of patent was included as income from royalties instead of a long term gain. If [76] correctly reported the total tax to be paid would amount to $80.74 as per amended return filed. Since the sum of $621.29

has been paid for the first quarterly payment on the amount erroneously reported, there has been an overpayment of $540.55.

VII.

The grounds stated in the claim for refund filed December 27, 1943, are as follows:

> Taxpayers filed a joint return for 1940 and erroneously reported a long term gain on the sale of capital assets as income from royalties. James Adamson sold to his brother all of his right, title anr interest in and to a certain partnership between them, together with his interest in certain inventions and trade mark. The sale was made on or about October 20, 1939. The aforesaid partnership was entered into in November, 1925. The assets sold were held for more than two years before sale. The amount reported in 1940 as income from royalties was in fact long term gain on the sale of capital assets and only 50% thereof should have been taken into account.
>
> This claim was prepared by Forest W. Monroe & Associates from information furnished by the Taxpayers.

VIII.

That on or about the first day of November, 1925, James H. Adamson and Percy Adamson entered into an agreement to become partners at will under the firm name and style of Adamson Bros. [77] Company, for the purpose of engaging in the business of developing and dealing in yarns and textiles, including the development of ideas in the field of special yarns, pursuant to an oral

understanding that James H. Adamson would furnish sufficient capital to get started, and that both James H. Adamson and Percy Adamson would cooperate in the management of the business, with James H. Adamson exercising a general supervision and control of the business, and Percy Adamson devoting all of his time and attention to the conduct thereof, the profits to be shared equally between them.

IX.

That said co-partnership entered upon the transaction of business in November, 1925, and that said co-partnership was terminated on or about the month of December, 1932.

X.

That, in the year 1930, Percy Adamson conceived the idea of an elastic yarn and, on July 30, 1930, filed in the United States Patent Office an application for a patent thereon. That, between July 30, 1930, and June, 1931, experimental and development work in connection with said idea was conducted and, on June 11, 1931, a new application for a patent was filed by said Percy Adamson in the United States Patent Office, which application was a continuation, in part, of the application filed July 30, 1930. That United States Letters Patent No. 1,822,847, covering an elastic yarn, was issued on such application on September 9, 1931.

XI.

That said co-partnership paid the expense of prosecuting said patent applications and, in addition thereto, incurred liability for development and experimental ex-

penses in connection therewith. That at all times prior to November 1, 1931, said invention was dealt with by James H. Adamson and Percy Adamson and was the property of said co-partnership. [78]

XII.

That the elastic yarn described in said patent and patent applications was and is known as "Lastex." That, on or about April 9, 1931, the said co-partnership filed in the United States Patent Office an application for the registration of a trademark for use in connection with the sale of such yarn, which trademark consisted of the word "Lastex" in a distinctive style of printing. That said trademark was duly registered on May 8, 1931, as the property of said co-partnership.

XIII.

That on or about April 10, 1931, Percy Adamson entered into two agreements, in writing, with the U. S. Rubber Company whereby in consideration of the license to use said invention and other consideration, including the agreement of said Percy Adamson to procure the assignment to the U. S. Rubber Company of said trademark, the U. S. Rubber Company agreed to pay to said Percy Adamson certain royalties and commissions. That said contracts were made simultaneously and as a single transaction.

XIV.

That on or about January 2, 1932, Percy Adamson and the said U. S. Rubber Company entered into two contracts, in writing, which were made in substitution and superseded the contracts made April 10, 1931.

XV.

That on or about July 7, 1931, in pursuance of said agreement made by Percy Adamson with the U. S. Rubber Company on April 10, 1931, the said co-partnership assigned to the U. S. Rubber Company the aforementioned trademark.

XVI.

That on or about November 1, 1931, Percy Adamson assumed the exclusive management of the partnership affairs without the [79] consent of James H. Adamson. That on or about March 24, 1934, Percy Adamson repudiated the existence of the partnership or any partnership obligation.

XVII

That after November 1, 1931, neither the partnership of Adamson Bros. Company nor James H. Adamson engaged in the business of developing and dealing in yarns and textiles, or in the development of ideas in the field of special yarns, nor was James H. Adamson engaged in the business of buying or selling inventions or patents.

XVIII.

That on or about May 14, 1934, James H. Adamson commenced an action in the Supreme Court of New York County against Percy Adamson for the dissolution of the partnership and for an accounting of the affairs and property of said partnership.

XIX.

That thereafter by order made and entered in said action, Harold R. Medina was duly appointed Referee to hear and determine the same. That on December 31,

1937, the said Harold R. Medina rendered his opinion in the said action and on January 8, 1938, he made his report in the said action wherein he set forth his findings of fact and conclusions of law and made his decision therein.

XX.

That thereafter and on July 8, 1939, a judgment was filed and entered in the above entitled action in accordance with the decision hereinabove referred to.

XXI.

That by said decision and judgment it was adjudicated, among other things, that James H. Adamson and Percy Adamson were each entitled to an undivided one-half share, as tenants in common, to the contracts with the U. S. Rubber Company, hereinabove referred [80] to, dated January 2, 1932, together with the invention and patent. It was further directed that Percy Adamson be directed to execute and deliver to James H. Adamson an assignment of the undivided share of the said contracts, such assignment to be made by way of confirmation and further assurance of the title to such undivided share.

XXII.

That the said judgment provided, among other things, that Percy Adamson pay to James H. Adamson the sum of $271,044.92, together with interest and costs. That the obligation to pay said sum was discharged by agreements dated February 23, 1938, and September 11, 1939, and was completely discharged and paid prior to October 20, 1939.

XXIII.

That on or about the 20th day of October, 1939, James H. Adamson entered into an agreement with Percy Adamson and the U. S. Rubber Company wherein and whereby the said James H. Adamson did sell, assign and transfer to Percy Adamson all of his right, title and interest in and to any and all assets which formerly belonged to the partnership hereinabove referred to, between James H. Adamson and Percy Adamson, under the firm name and style of Adamson Bros. Company, consisting primarily of the following:

(a) The reversionary or other right of the certain trademark "Lastex" and the registration thereof.

(b) The certain invention for which the United States Letters Patent No. 1,822,847 was issued under date of September 8, 1931, together with all Letters Patent of foreign countries issued thereon, and all applications therefor.

(c) The two certain contracts, both dated January 2, 1932, between Percy Adamson and the U. S. Rubber Company, hereinabove described. [81]

That, in consideration of the said sale, Percy Adamson agreed to pay to James H. Adamson the sum of $215,000, without interest, as follows:

> $5,000 upon the execution of the agreement and $210,000 in equal installments of $2,500 each, beginning on December 1, 1939, and, thereafter, on

the 1st day of each second month until the full balance of $210,000 shall have been paid.

XXIV.

Plaintiffs contend that the sums received under the said contract dated October 20, 1939, for the taxable years involved constitute a capital gain, whereas the Commissioner of Internal Revenue determined that the amount received under said contract constitutes ordinary income.

CONCLUSIONS OF LAW

Pursuant to the above Findings of Fact, the court draws the following Conclusions of Law:

I.

That plaintiffs are entitled to judgment against defendant in the sum of $2,577.52, together with interest on the said sum at the rate prescribed by law.

ORDER FOR JUDGMENT

Let judgment be entered accordingly.

Dated: This 28th day of January, 1946.

LEON R. YANKWICH

Judge [82]

Approved as to form. Zagon, Aaron and Sandler and Nathan Schwartz, by Harold E. Aaron, Attorneys for Plaintiffs; Charles H. Carr, United States Attorney, E. H. Mitchell and George M. Bryant, Assistant U. S. Attorneys, Eugene Harpole, Special Attorney, Bureau of Internal Revenue, by George M. Bryant, Attorneys for Defendant.

[Endorsed]: Filed Jan. 28, 1946. [83]

In the District Court of the United States in and for the Southern District of California
Central Division

No. 4649-BH

JAMES H. ADAMSON and MARION C. ADAMSON,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above entitled matter came duly and regularly on to be heard before the undersigned, Leon R. Yankwich, one of the Judges of the above entitled court, at Los Angeles, California, on January 8, 1946, Zagon, Aaron and Sandler and Nathan Schwartz by Ray Sandler, appearing as Attorneys for the plaintiffs, and Charles H. Carr, United States Attorney, E. H. Mitchell and George M. Bryant, Assistant U. S. Attorney, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, by George M. Bryant, appearing as Attorneys for the defendant, the matter having been tried, and a Stipulation of Facts and oral evidence having been received, and argument of counsel having been heard, and the court having heretofore filed and cause to be filed its Findings of Fact, Conclusions of Law and Order for Judgment, Now Therefore,

It Is Hereby Ordered, Adjudged and Decreed that plaintiffs [84] have and recover of the defendant the sum of Two Thousand Five Hundred Seventy-Seven Dollars Fifty-Two Cents ($2,577.52), together with interest on said sum at the rate prescribed by law.

Dated: This 28th day of January, 1946.

LEON R. YANKWICH
Judge

Approved as to form. Zagon, Aaron and Sandler and Nathan Schwartz, by Harold E. Aaron, Attorneys for Plaintiffs; Charles H. Carr, United States Attorney, E. H. Mitchell and George M. Bryant, Assistant U. S. Attorneys, Eugene Harpole, Special Attorney, Bureau of Internal Revenue, by George M. Bryant, Attorneys for Defendant.

Judgment entered Jan. 28, 1946. Docketed Jan. 28, 1946. C. O. Book 36, page 570. Edmund L. Smith, Clerk, by John A. Childress, Deputy.

[Endorsed]: Filed Jan. 28, 1946. [85]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: James H. Adamson and Marion C. Adamson, Plaintiffs, and Messrs. Zagon, Aaron and Sandler and Nathan Schwartz, Their Attorneys:

Notice Is Hereby Given that the United States of America, the Defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on January 28, 1946.

Dated this 8th day of March, 1946.

CHARLES H. CARR
United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistant U. S. Attorneys

EUGENE HARPOLE, Special Attorney,
Bureau of Internal Revenue

By George M. Bryant
Attorneys for Defendant

[Endorsed] Filed & mailed copy to Zagon, Aaron & Sandler and Nathan Schwartz, Attys. for Plfs. Mar. 8, 1946. [86]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET CAUSE ON APPEAL

Upon motion of defendant-appellant and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the above entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including the 6th day of June, 1946.

Dated this 15th day of April, 1946.

LEON R. YANKWICH
United States District Judge

[Endorsed]: Filed Apr. 15, 1946. [87]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 89 inclusive contain full, true and correct copies of Complaint; Answer; Amended Answer; Stipulation of Facts; Findings of Fact, Conclusions of Law and Order for Judgment; Judgment; Notice of Appeal; Order Extending Time to Docket Cause on Appeal; and Stipulation Designating Contents of Record on Appeal which, together with copy of the Reporter's Transcript of hearing on January 8, 1946, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 24 day of July, A. D. 1946.

(Seal) EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy Clerk

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

Los Angeles, California, Tuesday, January 8, 1946, 10:00 A. M.

Mr. Sandler: Your Honor, in this matter there has been a stipulation of facts which has been agreed on, containing several exhibits that I would like to have permission now to file.

The Court: The stipulation of facts will be received and marked as plaintiffs' exhibit.

Mr. Sandler: In addition to the stipulation of facts, your Honor, we have filed memorandums in this case.

The Court: I have read them.

Mr. Sandler: There was a prior proceeding in the New York court which determined the factual situation involved in the present case, and we have covered that by the stipulation. I have just one particular point. I have here the report of the referee who was appointed in that case. It is a rather voluminous report, and counsel and I do not wish to burden the record with it, but there is one particular portion on page 80 of this report, with respect to the ownership of the patent, which I don't think has been covered in the judgment. That is the invention and patent, in which the invention is embodied. I don't think there is any dispute, is there, Mr. Bryant, that that was a partnership asset?

Mr. Bryant: The facts are stipulated, that it is an asset of the partnership. [2*]

*Page number appearing at top of page of original Reporter's Transcript.

Mr. Sandler: Therefore, I don't feel any further evidence in this case is necessary. I wanted to be sure. It is stipulated that it is a partnership asset.

The Court: I have read the memoranda you have filed. The only issue in the case is whether these payments are taxable as income; isn't that correct?

Mr. Sandler: That is correct, your Honor. That is the issue.

The Court: The plaintiff contends that it is capital, and is not taxable as income.

Mr. Sandler: Yes. Mr. Adamson, will you take the stand, please?

JAMES H. ADAMSON,

the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

The Clerk: Will you state, please, your full name?

The Witness: James H. Adamson.

Direct Examination

By Mr. Sandler:

Q. Mr. Adamson, you are one of the plaintiffs in this case, are you not? A. Yes.

Q. Mr. Adamson, we have a stipulation with respect to most of the facts, and it refers to a judgment that you procured [3] against your brother, resulting out of certain litigation in the State of New York. You are familiar with that judgment, are you not? A. Yes.

Q. That particular judgment refers to a judgment in your favor, against your brother, in the sum of two hundred and seventy-one thousand and some odd dollars. Do you recall that? A. Yes.

(Testimony of James H. Adamson)

Q. After the rendition of that judgment you entered into a contract with your brother, dated October 20, 1939, whereby you sold certain items referred to in that contract. Do you remember that contract? A. Yes.

Q. Prior to the execution of that last contract, which was October 20, 1939, or thereabouts, was that two hundred and seventy-one thousand dollar judgment satisfied?

A. Yes.

Q. In other words, the payments provided in this contract constituted no part of any money judgment that was rendered by that judgment?

A. May I have that read, please?

Mr. Bryant: I am going to object to that question.

The Court: It calls for a legal conclusion. In fact, it is the question involved, whether a person, to satisfy a [4] judgment he has obtained, enters into a contract which allows the payment of the judgment over a period of years, is satisfying the judgment or entering into a separate agreement. It is one of the issues.

Mr. Sandler: I don't think so. In other words, as I read the judgment, that is a legal conclusion. It is divided into two parts: No. 1, It established an undivided half interest in the contracts. Furthermore, in the second part, it rendered a money judgment in the sum of two hundred and seventy-one thousand dollars.

The Court: That money judgment, however, was not to be paid over a period.

Mr. Sandler: That is right.

The Court: Then they agreed this money judgment should be paid over a period of years?

(Testimony of James H. Adamson)

Mr. Sandler: No, your Honor; that is what I am trying to explain. That two hundred and seventy-one thousand dollars was actually paid.

The Court: I did not so understand.

Mr. Sandler: That is a fact, your Honor. That is what I am trying to clarify.

The Court: Go ahead.

Mr. Sandler: I will ask the direct question, Mr. Adamson: Was that two hundred and seventy-one thousand dollars paid and settled aside from this contract? [5]

A. Yes.

Q. Before this contract was executed? A. Yes.

Q. Mr. Adamson, after November of 1931—under our stipulation of facts that was the date upon which your brother moved over to the United States Rubber Company—after that date did you, yourself, personally engage in any phase of the textile business? A. No.

Mr. Sandler: To go back, your Honor, and review the facts very briefly: We have here two brothers who were partners, who were engaged in the business of formulating various types of textiles and yarns. In the course of that business, according to the judgment and the decision stipulated to, and introduced here in evidence. the invention of an elastic yarn, called "Lastex," and the patent in which the invention was embodied, as well as the trademark, was a partnership asset acquired by the partnership in the course of business.

(Testimony of James H. Adamson)

Q. In 1931 did you own any patents? A. Yes.

Q. What patents, other than your interest in "Lastex," did you own?

A. A patent on a grandstand that I developed.

Q. Did you offer, or hold that patent out for sale to [6] customers? A. No.

Q. What business were you in after 1931?

A. Contracting; interior woodwork; furniture.

Q. Between the years 1931 and 1939, when you entered into this contract with your brother and the United States Rubber Company, did you offer your interest in the patent for sale to customers in the course of business?

A. No.

Q. During the year 1940, Mr. Adamson, that being the year that is involved in this present litigation, did your wife have any separate income? A. No.

Q. Did she have any deduction that she claimed under your income tax return? A. No.

Mr. Sandler: That is all.

The Court: Any questions?

Mr. Bryant: No questions.

Mr. Sandler: The plaintiff rests, your Honor.

The Court: Is there any further testimony to offer?

Mr. Bryant: No testimony.

The Court: I will hear any argument you gentlemen desire to present.

(Argument.) [7]

The Court: It seems to me that the Stilgenbaur case is binding, in the light of the stipulation of facts and in the light of the agreement which was entered into in this case. That decision holds that any method of terminating the partnership, whether it be by mutual agreement dissolving the partnership and a withdrawal of capital by one partner, or whether it be sold to outsiders, or whether it be by the legal process of dissolution, any one of these is treated by the Ninth Circuit as a sale, and taxable as capital loss or gain, and not as income.

For that reason, the judgment should be for the plaintiff, and it will be so ordered.

[Endorsed]: Filed Jul. 19, 1946. [8]

[Endorsed]: No. 11396. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. James H. Adamson and Marion C. Adamson, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 26, 1946.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of the United States in and for the Ninth Circuit

No. 11396

UNITED STATES OF AMERICA,

Appellant,

v.

JAMES H. ADAMSON and MARION C. ADAMSON,

Appellees.

STIPULATION EXTENDING TIME TO DESIGNATE CONTENTS OF RECORD ON APPEAL AND TO DOCKET CAUSE ON APPEAL

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled action, through their respective counsel undersigned, that the time to designate the contents of record on appeal and to docket cause on appeal in the above entitled matter may be extended to and including August 1, 1946.

This stipulation is entered into upon the basis that a compromise is being negotiated between the parties and the question as to appeal has not been resolved by the Solicitor General of the United States.

It Is So Stipulated.

Dated this 31st day of May, 1946.

TOM C. CLARK
Attorney General of the United States

SEWALL KEY
Acting Assistant Attorney General

CHARLES H. CARR
United States Attorney

E. H. MITCHELL and
GEORGE *H.* BRYANT
Assistant U. S. Attorneys

EUGENE HARPOLE, Special Attorney
Bureau of Internal Revenue

By George M. Bryant

Attorneys for Appellant

ZAGON, AARON AND SANDLER and
NATHAN SCHWARTS

By Ray Sandler

Attorneys for Appellee

It is So Ordered.

June 3, 1946.

ALBERT LEE STEPHENS
Judge

A True Copy. Attest: Jun. 4, 1946.

(Seal) PAUL P. O'BRIEN,
Clerk.

[Verified.]

[Endorsed]: Filed Jun. 4, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

On appeal from the judgment in the above-entitled action the appellant will urge and rely upon the following points:

1. The District Court erred in concluding that plaintiffs are entitled to judgment against the defendant in the sum of $2,577.52, together with interest on the said sum at the rate prescribed by law.

2. The District Court erred in that the findings of fact do not support the conclusion of law.

3. The District Court erred in that the findings of fact do not support the judgment.

4. The District Court erred in failing to conclude as a matter of law that the amounts received by the plaintiff James H. Adamson, in 1940, pursuant to an agreement dated October 20, 1939, whereby James H. Adamson sold to Percy Adamson all of his right, title and interest in and to any and all assets which formerly belonged to the partnership between James H. Adamson and Percy Adamson, under the firm name and style of Adamson Bros. Company, constituted ordinary income for federal tax purposes.

5. The District Court erred in failing to conclude as a matter of law that the income taxes involved in this action were legally and properly assessed and collected.

6. The District Court erred in ordering and entering judgment for plaintiffs and in failing to order and enter judgment for defendant.

JAMES M. CARTER
United States Attorney

E. H. MITCHELL and
GEORGE M. BRYANT
Assistants U. S. Attorney

EUGENE HARPOLE, Special Attorney
Bureau of Internal Revenue

By George M. Bryant

Attorneys for Appellant

* * * * * * * * *

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 26, 1946. Paul P. O'Brien, Clerk.